No. 24-1020

IN THE

Supreme Court of the United States

UBER TECHNOLOGIES, INC. AND RAISER LLC,
Petitioners,

v.

AMIE DRAMMEH, *et al.*,
Respondents.

UBER TECHNOLOGIES, INC., *et al.*,
Petitioners,

v.

JANE DOE,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In *Uber Technologies, Inc. v. Drammeh*, the survivors of an Uber driver killed by two Uber passengers in a failed carjacking attempt brought a wrongful death action under Washington law in federal district court alleging that Uber breached its duty to exercise reasonable care to prevent foreseeable harm. The district court granted summary judgment in Uber's favor concluding that Uber had no duty of reasonable care under Washington law. On appeal, a unanimous panel of the court of appeals certified the unsettled questions of state law raised in the case to the Supreme Court of Washington. That court declined to answer the certified questions without explanation. Called on to determine the content of Washington law, the panel held that Uber had a duty to exercise reasonable care to protect its driver from foreseeable harm, issuing its decision in an unpublished, non-precedential opinion.

The question presented in *Uber Technologies, Inc. v. Drammeh* is:

Whether the court of appeals violated the Rules of Decision Act, 28 U.S.C. § 1652, and *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) in its determination of the content of state law for application in a diversity case.

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INTRODUCTION

In two unrelated tort cases, Uber lost dispositive motions based on the court of appeals's discernment of existing Washington and California state substantive law, respectively. Unwilling to accept this outcome, it attacks both rulings in a single petition for writ of certiorari, accusing the court of appeals panels that decided the cases of invading the sovereignty of both states by employing an "extreme" "predictive" approach in determining the content of applicable state law. It urges the Court to grant its petition to resolve what it claims is a "deeply entrenched" conflict between circuits that follow existing state law and those that predict how the state's highest court would resolve a state law question.

An accurate description of the proceedings in these two cases reveals that Uber's attempt to gain the Court's attention is misleading and misguided in every respect. Rather than impinge on the state's sovereignty to declare its own law, the panels certified to the respective state supreme courts the unsettled questions of local law. Each state supreme court, however, declined to answer the certified questions, requiring the respective panels to do what *Erie* instructs: analyze and rely on the law of the appropriate state to draw legal conclusions on the narrow issues presented. This is the opposite of reliance on a "transcendental body of law" as Uber claims. By designating each opinion "not for publication," the court of appeals limited the precedential effect of the decisions to the parties in the case, binding neither state nor federal courts to the reasoning that led to the result. Even the legal scholars on whom Uber relies agree that there is no "conflict" among the federal circuits in the application of *Erie* that calls for this Court's attention.

The essential premise of Uber's petition is that the court of appeals's determination of the applicable state substantive law in each case is so egregiously wrong that that it must amount to an unspoken violation of the Rules of Decision Act and *Erie*. For the Court to consider this argument, it would have to perform an extensive study of the state tort law of Washington and California, respectively. Such an exercise is not contemplated by this Court's Rule 10 and the Court's cases on considerations for granting certiorari.

Uber's quarrel with the court of appeals is not with its methodology but with the results the methodology produced. Its petition does not present an issue worthy of this Court's review and should be denied.

STATEMENT

A. Facts And Procedural History Of *Drammeh v. Uber Technologies, Inc.*

Rideshare drivers are uniquely vulnerable to carjackings by riders. Because Uber drivers use their personal automobiles rather than marked commercial vehicles like taxicabs or transit vans, Uber cars provide an attractive target for carjackers: a rider could order a ride from Uber at a location of her choosing, enter the Uber vehicle consensually, and then commit the crime. 2-ER-240-43.[1] The risk of an Uber driver being victimized by an attempted carjacking or other criminal

1. References to "ER" are to the excerpts of record filed in the court of appeals. References to "Pet. App." are to the appendix filed with the petition of certiorari.

activity is vastly increased if the rider accesses the Uber platform anonymously; the rider can commit the crime without being easily identified and apprehended by law enforcement. *Id.* Uber has long known this; for years in Latin America, Uber required would-be riders who wanted to use anonymous forms of payment to undergo additional identity verification measures to deter criminal conduct. Pet. App. 18a. The need to adopt measures to protect drivers from carjacking attempts by riders in the United States became more urgent following the pandemic shutdown in the spring of 2020, when Uber experienced a massive surge in the rate of carjacking of its drivers. 2-ER-203-24. Despite this surge of carjackings in the spring, summer, and fall of 2020, Uber did not adopt such measures in the United States until after the incident described below. Pet. App. 18a.

In December 2020, Cherno Ceesay was working as an Uber driver in the Seattle, Washington area. Pet. App. 17a. The Uber App matched him with a rider account under the name of "Stephanie Tylor" requesting a ride in the Seattle suburb of Issaquah, Washington. *Id.* Stephanie Tylor did not exist; rather, it was a fake name used to create an Uber account by two individuals planning to carjack an Uber driver's car. *Id.* The payment method attached to the newly created rider account was a prepaid gift card, which allowed the user to remain anonymous. *Id.* When Ceesay reached the pickup spot, the riders entered Ceesay's car and fatally stabbed him in a botched attempt to steal the car. *Id.* at 17a-18a. Four months after the murder, Uber announced its adoption of a policy requiring riders wishing to use an anonymous payment method to provide photo identification to "act as a deterrent to those who are trying to cause harm." 2-ER-82–83.

Ceesay's survivors (collectively "Drammeh") sued Uber in federal district court in Washington alleging that Uber's negligence was a cause of his death. Uber moved for summary judgment asserting that it had no duty to exercise reasonable care to protect Ceesay from criminal acts of third parties and that the harm was not legally foreseeable. In response, Drammeh noted that the defense invoked by Uber—itself an exception to Washington's threshold principle that "every individual owes a duty of reasonable care to refrain from causing foreseeable harm to others" (*Norg v. City of Seattle*, 200 Wash. 2d 749, 763 (2023))—did not apply because Uber, the alleged tortfeasor, was in a special protective relationship with the victim. Although the Washington courts have not yet specifically defined the tort duties owed by rideshare companies to their drivers, the Washington courts have never held that previously identified special relationships were exclusive and recognized a relationship as supporting a protective duty when it was "analogous" to another relationship previously recognized as "special." *Niece v. Elmview Group Home*, 131 Wash. 2d 39, 45 (1997) (special relationship recognized between group home and resident because it was "analogous" to that between a hospital and patient). Nevertheless, the district court granted Uber's motion for summary judgment. Pet. App. 38a, 43a.

On appeal, a panel of the court of appeals agreed that "Washington law has not squarely addressed whether a special relationship exists between rideshare companies and their drivers that would give rise to . . . a duty of care." *Id.* at 19a. The court thus unanimously elected to certify to the Washington Supreme Court the issues of whether Uber owes a duty of care to its drivers when matching them with riders, *id.* at 22a, and whether the

type of criminal conduct involved in the case was legally foreseeable "such that Uber would owe a duty of care to its drivers." *Id.* at 24a.

The Washington Supreme Court declined to answer the certified questions without explanation. The court of appeals accordingly proceeded to decide whether summary judgment was appropriate on the facts and applicable law, noting its duty under *Erie* "to predict as best we can what the [Washington] Supreme Court would do in these circumstances." Pet. App. 48a (quoting *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 830 (9th Cir. 2001)).

After examining Washington Supreme Court cases considering whether a special protective relationship existed between parties in a variety of fact patterns, the court of appeals concluded that the Washington Supreme Court "would recognize a special relationship between rideshare companies and their drivers, such that rideshare companies owe a duty to use reasonable care in pairing their drivers with riders." Pet. App. 6a (footnote omitted). Citing *Niece*, the court noted that in determining whether a relationship between parties is "special" conferring on the defendant a protective duty of care, the Washington Supreme Court considers "analogous" relationships. *Id.* at 3a. The court added that for the Washington Supreme Court "the inquiry into whether a special relationship exists is less about simple analogy to an existing relationship and is instead more about 'vulnerability and entrustment.'" *Id.* (quoting *H.B.H v. State*, 192 Wash. 2d 154, 172-73 (2018)). Citing the summary judgment record, the court noted that it was not "rely[ing] on mere analogy" in finding that Uber and Drammeh were

in a special relationship giving rise to Uber's duty to exercise ordinary care; in opposing summary judgment, Drammeh "presented sufficient undisputed evidence for us to conclude that Uber maintained a requisite level of control in matching drivers with riders, such that Ceesay entrusted and was dependent upon Uber for his safety." *Id.* at 5a. The court further rejected the district court's conclusion that the attempted carjacking of Ceesay was not legally foreseeable under Washington law. Drammeh, the court observed, "provided evidence that Uber had knowledge that riders were committing violent assaults and carjackings against drivers." *Id.* at 7a. Given Uber's knowledge of assaults at the time, the court reasoned, Ceesay's murder "was not so highly extraordinary or improbable as to be unforeseeable as a matter of law." *Id.* (quoting *Asphy v. State* 552 P.3d 325, 340 (Wash. Ct. App. 2024)). The court thus reversed the summary judgment and remanded for disposition on the merits. *Id.* at 8a. The court designated its opinion "not for publication" and "not precedent" except as between the parties. *Id.* at 1a (citing 9th Cir. R. 36-3 (a)).

Judge Bumatay dissented, inferring that the Washington Supreme Court declined to answer the questions certified by the court of appeals because it agreed with the district court's determination and application of Washington law. Pet. App. 9a. Judge Bumatay disagreed with the panel majority's determination of the content of Washington law and its conclusion that the facts concerning the Uber's control of its drivers' safety and the legal foreseeability of the harm supported the imposition of liability on Uber under Washington law. *Id.* at 9a-13a. But nowhere did he suggest that the panel majority failed to discharge its duty under *Erie* to determine the content

of Washington law. The court of appeals denied Uber's petition for rehearing en banc with only Judge Bumatay, the panel dissenter, voting in favor. Pet. App 45a.

B. Procedural History Of *Doe v. Uber Technologies, Inc.*

Plaintiff Jane Doe sued Uber in federal court in California for a sexual assault that occurred after she entered a car she thought was an Uber ordered for her by her boyfriend but which was actually operated by a once-authorized Uber driver who, after multiple sexual assault complaints, had not been assigned to drive Jane Doe through Uber's application. The district court granted summary judgment for Uber. Pet. App. at 82a. On appeal, a panel of the court of appeals certified to the California Supreme Court the issue of whether Uber owed a duty of care. *Id.* at 70a. That court declined to answer the certified question. *Id.* at 67a. The court of appeals then applied state law, including a state statute and decisions of the state's highest court, concluding that Uber had a duty to Jane Doe as to her experience with the Uber-marked car, and reversing the summary judgment in favor of Uber. *Id.* at 53a-59a. One judge wrote a separate opinion providing a different understanding of state law, primarily as to the import of the state highest court's denial of the certification request. *Id.* 60a-66a. As in *Drammeh*, the panel designated the opinion "not for publication," limiting its precedential effect to the parties. *Id.* at 46a n.1. The court of appeals denied Uber's petition for rehearing en banc. Pet. App. 95a.

REASONS FOR DENYING THE PETITION

I. Uber's Petition Fails To Establish A "Compelling Reason" For The Court To Review These Two Unpublished Decisions.

Rule 10 of the rules of this Court advises that a petition for writ of certiorari "will only be granted for compelling reasons" and is rarely granted when the asserted error consists of "the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Uber does not contend that either the *Drammeh* panel or the *Doe* panel improperly stated the law concerning its obligation to determine and apply the substance of state common law. Nor do the separate opinions in these cases allege or imply that the majority failed to apply the legal standard set forth by *Erie* and its progeny. Instead, the separate opinions in each case simply disagreed with the court of appeals on the outcome required under existing state law. *See Drammeh*, Pet. App. 9a-10a (Bumatay, J., dissenting) ("[B]ecause Washington law doesn't extend so far as to establish a duty on rideshare companies to protect drivers from the criminal acts of passengers, I respectfully dissent"); *Doe*, Pet. App. 62a-64a (Graber, J., concurring in part and dissenting in part) (disagreeing that the majority's disposition reflects California substantive law). No other judge on the en banc court shared these concerns. And because both opinions are unpublished, they are binding only on the parties and do not have the practical implications that Uber predicts. Pet. 32 (quoting Pet. App. 24a-25a, 78a).

Uber seems to be seeking correction of an error it mistakenly perceives. Yet as Justice Alito has observed, "[e]rror correction is outside the mainstream of the Court's

functions and not among the 'compelling reasons' that govern the grant of certiorari." *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring) (quotation marks and citations omitted). Neither the *Drammeh* opinion nor the *Doe* opinion describes the court of appeals's obligation to determine and apply state law in a way that conflicts with *Erie*, its progeny, or the decisions of any circuit. Uber's allegation that the court of appeals erred in apprehending the governing state substantive law in these cases does not support a grant of certiorari under Rule 10.

II. Uber's Petition Does Not Demonstrate A Real And Resolvable Conflict On The Application Of The Rules Of Decision Act And *Erie*.

Uber posits an "intractabl[e]" conflict between circuits that "adhere to state law as it currently stands" and those that "purport to step into the shoes of the state supreme court" and not only apply existing law but "predict expansions." Uber Pet. 16. It identifies the D.C., First, Fourth, and Fifth Circuit as the jurisdictions that "follow existing law" and the remaining eight circuits that hear diversity cases as courts that "allow predictive changes to state common law." Uber Pet. 6. A review of the circuits' application of *Erie* reveals the conflict imagined by Uber simply does not exist. Uber's examples of "conflict" are trivial semantic variations rather than substantive differences in approach. And the minor variations in language and emphasis do not call for reconciliation under this Court's Rule 10.

For example, the very cases Uber cites are invariably accompanied by predictions that the state supreme court would not accept the proffered theory of liability. *See*,

e.g., *K&D LLC v. Trump Old Post Office, LLC*, 951 F.3d 503,509 (D.C. Cir. 2020) (first stating that court may not "alter or expand the scope of D.C. tort law," then observing that plaintiff's claim "bears little resemblance" to the claims recognized as viable by the D.C. courts); *Veilleux v. National Broadcasting Co.*, 206 F.3d 92, 131 (1st Cir. 2000) (first expressing reluctance to expand the "relatively undeveloped doctrine" of liability advanced by the plaintiff, then explaining that the plaintiff's theory of liability "bears little resemblance" to theories previously found by the state highest court to support liability); *Rhodes v. E.I. duPont de Nemours & Co.*, 636 F.3d 88, 96 (4th Cir. 2011) (first noting Fourth Circuit's "conservative[]" approach to discerning state law, then explaining that the state's highest court rejected the interpretation advanced by plaintiffs); *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1220 (5th Cir. 1985) (stating that the court must apply Texas law as it currently exists but adding that "Texas courts have given no indication that [the] rule advocated by plaintiff is imminent and analogous cases from other jurisdictions do not support such a rule."). In these cases, the proposed rule of state law was rejected not simply because state courts had not applied it in the exact factual circumstance presented in the case before the court but because there was no other indication that the state supreme court would apply it.

Indeed, each of the circuits whose approach to applying *Erie* Uber prefers (the D.C., First, Fourth, and Fifth Circuits) have repeatedly described their obligation under *Erie* to "predict" or "guess" how the state's highest court would resolve the state law issue before it. *See*, *e.g.*, *Novak v. Capital Management & Development Corp.*, 452 F.3d 902, 907 (D.C. Cir. 2006) (court's duty under *Erie* is to "'reason by analogy from D.C. cases' to predict

the law the District of Columbia Court of Appeals would apply if it decided this case" (quoting *Workman v. United Methodist Comm. on Relief*, 320 F.3d 259, 262 (D.C. Cir. 2003))); *Wilson v. Good Humor Corp.*, 757 F.2d 1293, 1309 (D.C. Cir. 1985) ("candidly" admitting that the court engaged "in the predictive exercise that post-*Erie* federal courts have always undertaken in diversity cases, however uncomfortably" in finding the existence of a legal duty in a case with novel fact pattern); *Mu v. Omni Hotels Management Corp.*, 882 F.3d 1, 9 (1st Cir. 2018) (expressing "confiden[ce]" in its "'*Erie* guess'" that the Rhode Island Supreme Court would find the existence of a tort duty in a case presenting factual circumstances not previously considered "in the absence of any Rhode Island precedent to the contrary"); *Butler v. Balolia*, 736 F.3d 609 (1st Cir. 2013) (making "an informed prophesy" that "the Washington Supreme Court, if squarely presented with the question, would recognize a cause of action for breach of a contract to negotiate."); *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 964 (4th Cir. 2020) ("in a situation where the [state's highest court] has spoken neither directly nor indirectly on the particular issue before us, we are called upon to predict how that court would rule if presented with the issue" (quoting *Private Mortg. Inv. Servs., Inc. v. Hotel and Club Assocs., Inc.*, 296 F.3d 308, 312 (4th Cir. 2002))); *Kafi, Inc., v. Wells Fargo Bank, N.A.*, 131 F.4th 271, 281 (5th Cir. 2025) (when the state's highest court "has not addressed the particular substantive law issue presented on appeal, we generally make an *Erie* guess as to what it most likely would decide, mindful that our task is to predict state law, not to create or modify it") (footnote, internal quotation marks, and citations omitted); *Hux v. Southern Methodist University*, 819 F.3d 776, 780 (5th Cir. 2016) (if the state's

highest court hasn't ruled on the legal issue, "we make an *Erie* guess, predicting what it would do if faced with the facts before us." (footnote omitted)). In short, there is no split. *All* circuits "predict[] what the state supreme court would do in federal cases governed by state substantive law," Uber Pet. 4, in compliance with *Erie.*

Straying to the substance of the state-law determinations of the court of appeals in these cases, Uber complains that the decisions run counter to the general principle that a person is not liable for a third party's intentional criminal conduct. But two of the federal circuits that supposedly embrace the approach to discerning state law favored by Uber have similarly found a state-law duty to exercise reasonable care to protect plaintiffs from third-party criminal conduct under circumstances not previously considered by the state supreme courts. *Mu*, 882 F.3d at 9 (hotel had duty to protect invitee from criminal assault although Rhode Island courts had not previously considered whether to impose a duty of care to protect against spontaneous criminal conduct by a third party); *Novak*, 452 F.3d at 914 (dance club had duty to exercise reasonable care to protect patrons from criminal assault although D.C. courts had never recognized such a duty under similar circumstances). Given that the court of appeals below uses the same predictive method for applying state law to new factual scenarios as these and all the other circuits, the two decisions challenged here by Uber pose no threat to federalism and certainly do not reflect a conflict among the circuits in their approach to *Erie.*.

Unable to conjure a bona fide conflict between the court of appeals' application of *Erie* in these cases and

those of the circuits whose approach Uber prefers, it depicts the court of appeals as defiantly refusing to apply clear state law. To judge this accusation in the context of these two separate diversity cases, the Court would have to take a deep dive into the state tort law of Washington and California, respectively—an exercise generally outside the purview of the Court and one that the Court should be unwilling to undertake. In any event, the depiction is demonstrably misleading. To support its caricature of Ninth Circuit as a renegade in the application of *Erie*, Uber quotes the court's observation (not a holding) in a footnote in a thirty-six year-old case that the court does not exhibit the "posture of restraint" shown by other circuits in determining state law. Uber Pet. 4 (quoting *Torres v. Goodyear Tire & Rubber Co.*, 867 F.2d 1234, 1238 n.1 (9th Cir. 1989)). But in the very footnoted sentence in the body of that opinion, the court expressed "hesitat[ion] prematurely to extend the law of products liability in the absence of an indication from the Arizona courts or Arizona legislature that such an extension would be desirable." *Id.* at 1238. Rather than decide the unsettled of question of law itself, the court of appeals certified it to the Arizona Supreme Court, *id.* at 1239—an act of comity that belies Uber's depiction of the court of appeals's position on *Erie*.

Uber is misguided in its suggestion that legal scholars are discomfited by the court of appeals's discernment of state law. Uber Pet. 14. Aside from the fact that *every federal circuit* acknowledges that its task under *Erie* is to "predict" the content of state law, the very commentary that Uber cites to support its suggestion demonstrates that Uber's report of scholarly concern is, at best, overstated. Laura E. Little, Erie*'s Unintended*

Consequence: Federal Courts Creating State Law, 52 Akron L. Rev. 275, 284 (2018) ("Is it an awful state of affairs when federal courts do their best to predict state law and the state courts comfortably reject that prediction? The answer is no. The state court response is part of a vibrant intellectual dialogue that creates good results. The weight of evidence suggests that the prediction model is working in a satisfactory way."); Diego A. Zambrano, *Federal Expansion and the Decay of State Courts*, 86 U. Chi. L. Rev. 2101, 2179-80 (2019) (worries that "federal '*Erie* guesses' of state law can be inaccurate and place state law in the hands of nonexpert federal judges" are "antiquated and overly formalistic—there's no reason to think federal judges decide state law issues in an unfair way, nor that they are so inaccurate as to verge on arbitrariness.").

Moreover, the academy has noted that the near-universal availability of certification of unsettled question of law to state supreme courts obviates any concern that federal courts entertaining diversity cases may impinge on state sovereignty. Bradford R. Clark, *Ascertaining the Laws of the Several States: Positivism and Judicial Federalism after* Erie, 145 U. Pa. L. Rev. 1459, 1564 (1997) (observing that any effort to determine the content of state law raises concerns but "[t]he courts' use of certification resolves these various concerns"); Michael C. Dorf, *Prediction and the Rule of Law*, 42 UCLA L. Rev. 651, 700-01 (1995) (noting that federal courts "have the discretion to certify questions to a state high court" and "[i]f one were seriously concerned about access to state high courts, more frequent use if certified questions or abstention might be a better response than attempting to predict what another court would do.");

Guido Calabresi, *Federal and State Courts: Restoring a Workable Balance*, 78 N.Y.U. L. Rev. 1293, 1301-02 (2003) ("Well, what's the answer? My long-suffering colleagues know what my answer is, and that is certify, certify, certify. . . . If the state's highest court doesn't want to take it, great! That gives us authority to impose our view of state law, provisionally, until the highest court of the state decides to resolve the question."). And as Professor Sachs has pointed out, even in the absence of certification the precedential effect of a federal court's interpretation of state law can be limited. Stephen E. Sachs, *Finding Law*, 107 Cal. L. Rev. 527, 560-61 (2019) ("Even when judges can't help breaking new ground in their decisions, they're still just making *decisions*; they don't have to be making *law*. . . . A legal rule might be 'the law of the case' or 'the law of the circuit without being 'the law'; it stands in for the actual law without supplanting or altering it." (emphasis in original)).

In both *Drammeh* and *Doe*, the court of appeals took precisely the path urged by Judge Calabresi and Professor Sachs. It certified questions of state law to the state's highest court. After the state courts, for unstated reasons, declined to answer the certified questions, the court of appeals drew from existing case law to decide the unsettled legal issues itself, "provisionally, until the highest court of [the] state decides to resolve the question." Calabresi, 78 N.Y.U. L. Rev. at 1302. The court of appeals further mitigated any conceivable incursion on state sovereignty by designating its decisions "not for publication," limiting their binding effect to the parties to the case. 9th Cir. R. 36-3 (a). Uber's hyperbolic concern of expanded liability,

Uber Pet. 32, is thus patently incorrect.[2] The Court should decline to engage in the purely academic exercise Uber proposes through its petition.

III. The Opinions In *Drammeh* And *Doe* Are Fully Consistent With This Court's *Erie* Jurisprudence.

Uber's contention that the court of appeals' decision in *Drammeh* violates *Erie* and its progeny is necessarily premised on its assumption this Court's cases prohibit federal courts from applying state law principles to fact patterns the state courts have not previously confronted. But Uber cites no case from this Court saying or implying as much. To the contrary, the Court has emphasized the importance of deciding "questions of state law when necessary for the disposition of a case brought to it for decision, although the highest court of the state had not answered them, the answers were difficult, and the character of the answers which the highest state courts might ultimately give remained uncertain." *Meredith v. City of Winter Haven*, 320 U.S. 228, 237 (1943). Under Uber's vision of *Erie*, the resolution of legal issues in a case presenting a novel factual context would never be "difficult"; if a state court had never found liability or a viable defense in that precise factual context, the party

2. Even had the court of appeals panels issued their decisions in reported opinions, the precedents would not precipitate the massive, unwarranted expansion of tort liability that Uber fears. Uber Pet. 32. The decisions merely preclude Uber from relying on an exception to the universally recognized background duty to exercise reasonable care to avoid injuring others. They do nothing to prevent Uber from asserting other typical defenses in tort actions such as compliance with the standard of care and lack of proximate causation.

would simply lose by default. Such an inflexible rule has no support in *Erie* or its progeny.

In neither *Drammeh* nor *Doe* did the court of appeals invoke a "transcendental body of law" to find the state-law duties that Uber opposes. Rather, in both cases the court relied entirely on decisions from state courts in Washington and California, respectively, to inform it on the content of applicable state tort law. In doing so, the court of appeals properly reviewed each district court decision de novo. *Salve Regina College v. Russell*, 499 U.S. 225, 239-40 (1991). The court of appeals did not err in its application of *Erie*, much less commit an error of significant enough dimension and impact to require correction by this Court.

Nevertheless, Uber portrays the appellate courts' resolution of the legal issues in each case as a brazen refusal to apply settled state law in defiance of this Court's mandate in *Erie*. Nothing could be further from the truth. In each case, the court *certified the disputed legal issues to the state supreme court for its resolution*. In each case, the state supreme court declined the certification as was its option under the applicable certification statute. And in each case, the appellate panel proceeded to determine the content of state law and apply it to the facts before it in full compliance with *Erie*.

Uber purports to know why the respective supreme courts declined certification, divining that they did so because the law was so clear in each case. Uber's presumption of omniscience is misplaced. Uber cites no case from this or any other court holding or hinting that the refusal of a state's highest court to answer a certified

question may be presumed to be an approval of a federal district court's disposition of the case and relieves a federal appeals court of its duty under *Erie* to determine state law. On the contrary, because a court may decline to answer a certified question for a variety of reasons, "a refusal by the state's highest court to answer the certified question should not be construed as a tacit acceptance or rejection of the question of law posed; it is not a decision on the merits." Geri J. Yonover, *A Kinder, Gentler Erie: Reining in the Use of Certification*, 47 Ark. L. Rev. 305, 324 (1994); Judith S. Kaye & Kenneth I. Weissman, *Interactive Judicial Federalism: Certified Questions in New York*, 69 Fordham L. Rev. 373, 425 n. 205 (2000) (rejection of a certified question "offers no clue as to how the state court would answer the question."); *see also* Rachel Koehn Breland, *Avoiding Rejection: Studying When and Why State Courts Decline Certified Questions*, 92 Fordham L. Rev. 1429, 1448 (2024) (referring to a federal court's resolution of state law issues after the state's highest court refused to answer certified questions as a "forced *Erie* guess"). Federal circuit courts—including one whose approach in applying *Erie* Uber prefers—have made "*Erie* guesses" that rejected the the district court's interpretation of state law even though the state's highest court declined certification on the state law issue. *Blanchard v. Engine & Gas Compressor Servs., Inc.*, 613 F.2d 65, 68 (5th Cir. 1980) (reversing district court's view of state law even after the supreme court's "cryptic, enigmatic" refusal to answer the certified question); *see also Shidler v. All American Life & Financial. Corp.*, 775 F.2d 917, 925 n. 9 (8th Cir. 1985) ("The defendants argue that the Iowa Supreme Court's refusal to answer this issue upon certification implies that the court agreed with the defendants' contention that no cause of action should be implied. This assertion is without

merit."). The "forced *Erie* guesses" below were neither extreme nor unprecedented and did not violate *Erie*.

IV. The Petition Is A Flawed Vehicle For Addressing The Academic Conflict Alleged By Uber.

The manner that Uber has chosen to bring these judgments to this Court is highly unusual. The judgments were issued by different appellate panels and involve different governing state substantive law, different parties, different fact patterns, and different theories of recovery. Uber's strategy of unilaterally combining its attack on these separate decisions in a single petition puts this Court to the burden of acknowledging these differences and explaining the effect they may have on the answer to the question presented.

Additionally, reexamination of this Court's *Erie* jurisprudence in the factual and procedural contexts of these two cases is unnecessary and likely to sow more confusion than it resolves. In neither case did the court of appeals predict *changes* in state law" but instead applied "existing state law" to factual scenarios that the state supreme courts had not previously considered. As explained above, any discrepancies in the application of *Erie* among the federal circuits are minor, not problematic, and not curable by a one-size-fits-all approach. If there truly were a meaningful conflict among the circuits in the application of *Erie*—and the *Drammeh* respondents deny that there is—the Court should await the appearance of a more appropriate vehicle in which to address it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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