No. 24-1020

In the
Supreme Court of the United States

UBER TECHNOLOGIES, INC.,
A DELAWARE CORPORATION, ET AL.,
Petitioners,

v.

AMIE DRAMMEH, ET AL.,
Respondents.

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

BRIEF FOR RESPONDENT JANE DOE IN OPPOSITION

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QUESTION PRESENTED

The petition (Pet. i) provides the following as the question presented:

> Whether, under *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), a federal court must apply existing state law, as the D.C., First, Fourth, and Fifth Circuits hold, or can predict changes in state law, as the Second, Third, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits hold.

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BRIEF FOR RESPONDENT JANE DOE IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals in this case, *Doe v. Uber Technologies, Inc.*, as amended (Pet. App. 46a–66a), is not published in the *Federal Reporter* but is available at 2025 WL 80365. (The version prior to amendment is not published in the *Federal Reporter* but is available at 2024 WL 3717483.) The order of the court of appeals denying petitioners' petition for panel rehearing and rehearing en banc and amending the original majority memorandum disposition (Pet. App. 94a–95a) is reported at 125 F.4th 984. The earlier opinion of the court of appeals certifying questions to the California Supreme Court (Pet. App. 68a–80a) is reported at 90 F.4th 946. The order of the California Supreme Court declining certification of those questions (Pet. App. 67a) is unreported. The opinion of the district court on summary judgment (Pet. App. 81a–93a) is not published in the *Federal Supplement* but is available at 2022 WL 4281363. An earlier order of the district court on a motion to dismiss is not published in the *Federal Supplement* but is available at 2020 WL 2097599.

JURISDICTION

The court of appeals entered judgment on August 8, 2024. *See Doe v. Uber Techs., Inc.*, No. 22-16562, 2024 WL 3717483 (9th Cir. Aug. 8, 2024). On January 13, 2025, the court of appeals issued an amended majority memorandum disposition when denying petitioners' petition for panel rehearing and en banc rehearing. Pet. App. 46a. On January 15, 2025, Justice

Kagan extended the time within which to file a petition for a writ of certiorari to and including March 21, 2025, and the petition was filed on that date. Petitioners have invoked this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

1. In August 2018, Jane Doe asked her boyfriend to call her an Uber because her phone battery was dying. Pet. App. 71a, 82a. Jane Doe's boyfriend arranged the Uber, and he attempted to text her the Uber car's license plate number, but Jane Doe's phone battery died before she received that message. Pet. App. 71a, 82a. Soon after, a car bearing an Uber decal pulled up in front of Jane Doe. Pet. App. 71a, 82a. Thinking that her boyfriend had ordered the ride, Jane Doe got in. Pet. App. 82a. Instead, the Uber-marked car's locks were immediately used to trap and abduct Jane Doe. Pet. App. 71a, 82a, 55a. She was raped and strangled by the Uber-marked car's driver, who was later criminally convicted. Pet. App. 71a, 82a.

The Uber-marked car's driver was a man petitioners (collectively, "Uber") previously employed and knew to have a criminal history. Pet. App. 71a, 82a. That history included two prior separate complaints for sexually assaulting passengers as an Uber driver, for which Uber had corroborating evidence, including GPS data. Pet. App. 71a, 82a; *see, e.g.*, 3-ER-533–536; 3-ER-583; 3-ER-588; 4-ER-759–765; 5-ER-979–982. Uber previously gave Uber's decal to that driver and provided access to Uber's application for him to pick up Uber passengers. Pet. App. 56a, 71a, 82a. Uber reactivated the driver's Uber account a day after the

first assault complaint. *See* Pet. App. 82a; 2-ER-292–293; 3-ER-539–541; 5-ER-984–985. After the second assault complaint, Uber made no effort when deactivating the driver's account to retrieve the car's Uber decal or to have the driver return or destroy it. Pet. App. 71a, 82a, 56a.

Jane Doe's experience is unfortunately far from isolated. Her abduction and rape are among many incidents in recent years in which Uber's business model, including its "active encouragement of vulnerable users," was used to facilitate assaults or killings by purported Uber drivers, including incidents involving Uber-marked cars and former Uber drivers. *See* Pet. App. 55a–56a (noting that "previous incidents involving imposter drivers . . . had reached 'crisis levels'" (quoting Uber's policy team at 2-ER-276–278)); Pet. App. 57a (referencing Jane Doe's identification of "numerous . . . similar incidents that occurred prior to her assault" and "evidence that Uber was aware of [them]").[1]

2. Jane Doe filed suit in federal court on state tort-law claims based on agency, common-carrier liability, and ordinary negligence. *See* Pet. App. 81a. After ordering that Jane Doe's state-law ordinary negligence claim could proceed to summary judgment, the district court decided that Uber did not owe a duty of

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[1] *See, e.g.*, Jane Doe C.A. Br. 7-9 (listing statistics and examples, including at 3-ER-421–425; 4-ER-883–884; 4-ER-888–892; 2-ER-218; 2-ER-240–241; 3-ER-391–403; 5-ER-936–938; 5-ER-940–942, 5-ER-962–964); Jane Doe C.A. Reh'g Opp. 4-5 (citing, in addition, 3-ER-336–346; 3-ER-354–361; 3-ER-387–390; 3-ER-435–438; 4-ER-811; 4-ER-816; 4-ER-824–825; 4-ER-831–834; 5-ER-945–947; 5-ER-951–953; 5-ER-956–958; 5-ER-966–967; 5-ER-969; 5-ER-971–972).

care to Jane Doe in the circumstances, based almost exclusively on an intermediate state court decision, which the district court perceived as factually similar. *Doe v. Uber Techs., Inc.*, No. 19-cv-03310, 2020 WL 2097599, at *3-*6 (N.D. Cal. 2020); Pet. App. 81a–90a.

3. Jane Doe appealed. The court of appeals issued a January 2024 order to certify two questions to the California Supreme Court. Pet. App. 68a. The questions concerned "what duty of care, if any" is owed by Uber to a described category of rideshare passengers suffering assault, and whether, if such duty exists, factors delineated in a California Supreme Court decision counsel "creating an exception to that duty" in a described category of cases. Pet. App. 68a. The California Supreme Court denied the certification request, with one Justice dissenting. Pet. App. 67a.

The court of appeals entered judgment for Jane Doe in August 2024, later amending its opinion in January 2025. *See* Pet. App. 46a. The court of appeals concluded, in an unpublished, nonprecedential memorandum disposition, that Uber owed "a general duty of ordinary care" under a state statutory provision that, as interpreted by the state's highest court, included a duty not to engage in conduct that creates or contributes to the risk of harm by third parties. Pet. App. 47a–55a. The court of appeals determined that Uber's cited intermediate state court opinions were inapposite, or—as to its primarily invoked opinion—"irreconcilable with" the state highest court's decisions on the applicable legal principles. Pet. App. 48a–53a, 55a–57a. The court of appeals applied the state highest court's decisions to determine that no exception to the general duty of care under state law should be created. Pet. App. 57a–59a. The court of

appeals did not reach other questions pertaining to liability, such as on breach or causation. Pet. App. 59a.

One judge issued a separate opinion that concurred in part and dissented in part. Pet. App. 60a. The separate opinion agreed with the court of appeals decision that intermediate state court opinions were deserving of weight, but disagreed that there was convincing evidence in state court opinions that the state's highest court would not follow Uber's primarily invoked intermediate state court opinion. Pet. App. 60a–66a, 49a–50a & n.3.

Panel and en banc rehearing were denied. Pet. App. 94a–95a.

ARGUMENT

The court of appeals decision in this case does not conflict with any decision of this Court or of any other court of appeals. The petition's question presented is not implicated in this case, which was correctly decided under this Court's precedent in any event. Instead, the petition seeks review of specific factbound application of state law. Review by this Court is therefore not warranted.

I. The petition establishes no conflict with this Court's decisions or between the circuits on the question presented.

1. The petition asserts a conflict between the circuits, and purportedly also with this Court's decisions in and following *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1937), over whether federal courts "must apply existing state law." Pet. i, 25. But the petition is mistaken. Instead, precedential opinions of the circuit courts criticized by the petition generally apply

this Court's well-developed *Erie* jurisprudence when addressing what *Erie* requires. In so doing, these courts have declared, based on this Court's *Erie*-based decisions, that their approach is to "ascertain . . . what the state law is and apply it." *E.g.*, *Lawson v. Grubhub, Inc.*, 13 F.4th 908, 913 (9th Cir. 2021) (quoting *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 237 (1940)); *Farthing v. City of Shawnee*, 39 F.3d 1131, 1137 (10th Cir. 1994); *Est. of Ratley v. Awad*, No. 23-6169, 2025 WL 1166454, at *1 (10th Cir. Apr. 22, 2025).[2]

This Court has repeatedly explained that federal courts hearing diversity cases may ascertain state law in appropriate circumstances by "determin[ing] [] what the [state's highest court] *would probably rule* in a similar case." *King v. Order of United Com. Travelers of Am.*, 333 U.S. 153, 161 (1948) (emphasis added). This Court has stated that the federal court's *Erie* task may include "ascertaining what the state courts may hereafter determine the state law to be."

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[2] *See, e.g.*, *Corsair Special Situations Fund, L.P. v. Pesiri*, 887 F.3d 589, 591 (2d Cir. 2018) (federal court is "bound to apply [state] law as determined by the [state's highest court]"); *Veritas v. Cable News Network, Inc.*, 121 F.4th 1267, 1275 n.13 (11th Cir. 2024) ("We must accept and apply [state] law as applied and interpreted by the highest court of the state . . . ."); *Hollander v. Brown*, 457 F.3d 688, 692–693 (7th Cir. 2006) (declaring, under *Erie*'s "familiar rule," "oblig[ation] to apply" the state law as of "today" to resolve the relevant question); *M&I Marshall & Ilsley Bank v. Sunrise Farms Dev., LLC*, 737 F.3d 1198, 1199–1200 (8th Cir. 2013) (citing *West*, 311 U.S. at 236, in declaring that "state law," as generally "defin[ed]" by the state's highest court, "applies" under *Erie*); *Buczek v. Cont'l Cas. Ins. Co.*, 378 F.3d 284, 288 n.2 (3d Cir. 2004) (federal court is "to apply existing state law as interpreted by the state's highest court").

Meredith v. City of Winter Haven, 320 U.S. 228, 234 (1943). In so doing, this Court reasoned that it is the federal court's *Erie* "responsibility" to "decide questions of state law" even where not already "answered" by the state's highest court, and where "the character of the answers which the state's highest court *might ultimately give* remained uncertain." *Id.* at 237 (emphasis added). This Court has emphasized that the question in such *Erie* cases is what "the highest court of the state *would decide*." *West*, 311 U.S. at 237 (emphasis added); *see also Semtek Int'l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508 (2001) ("[T]he federally prescribed rule of decision" under *Erie* is "the law that *would be applied* by [the relevant] state courts." (emphasis added)).

Leading legal treatises have understood this Court's *Erie* jurisprudence in this manner. *See* Wright & Miller, Fed. Practice & Procedure § 4507 (3d ed. updated 2025) (recounting and summarizing this Court's decisions making "clear" that "the federal court must determine issues of state law as it believes the highest court of the state would presently determine them"). The petition's own cited legal commentary (Pet. 26, 29, 3–4, 16, 27–28) also supports this understanding.[3]

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[3] *See* Stephen E. Sachs, *Finding Law*, 107 Cal. L. Rev. 527, 558–559 (2019) ("under *Erie*," "[f]ederal courts deciding state-law issues must perform" a process of "predicting how the issues might be decided in the state court of last resort"); Michael C. Dorf, *Prediction and the Rule of Law*, 42 UCLA L. Rev. 651, 695–696 (1995) (observing that the "law is settled" in *Erie* contexts that a federal court ascertaining uncertain state law must try to "predict how the state high court would resolve" the case);

Accordingly, even the circuits whose approach the petition extols (Pet. 15–19, 24, 27) have ascertained state law by assessing how the relevant state court "would rule" or "would decide." *E.g.*, *Bourgeois v. TJX Cos.*, 129 F.4th 28, 33 (1st Cir. 2025); *Real Time Med. Sys., Inc. v. PointClickCare Techs., Inc.*, 131 F.4th 205, 224 (4th Cir. 2025); *Kafi, Inc. v. Wells Fargo Bank, N.A.*, 131 F.4th 271, 281 (5th Cir. 2025); *Indep. Petrochem. Corp. v. Aetna Cas. & Sur. Co.*, 944 F.2d 940, 944 (D.C. Cir. 1991) (quoting C. Wright, Federal Courts 373 (4th ed. 1983)). The petition's asserted "split" does not exist.

2. The petition sows confusion by conflating such an *Erie* prediction of how the relevant state court would rule, which is an *application* of state law, with some impermissible form of "*making*" or "*changing*" law. *See* Pet. 18–21, 24–30, i, 6 (emphases added). To that end, the petition quotes several circuit decisions out of context, misreading their import. Properly understood, the decisions the petition cites neither implicate the petition's question presented nor illustrate a "split" as claimed (Pet. 4).

For example, the petition claims that three circuits are "willing to expand state law." Pet. 21. But the cited Tenth Circuit decision expressly concluded the quoted sentence by stating that "it is not a federal court's place to 'expand . . . state law beyond the bounds set by the [highest court of the state]." *Amparan v. Lake Powell Car Rental Cos.*, 882 F.3d 943,

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Bradford R. Clark, *Ascertaining the Laws of the Several States: Positivism and Judicial Federalism After* Erie, 145 U. Pa. L. Rev. 1459, 1496–1497 (1997) (describing how this Court's decisions have "suggest[ed] a predictive approach" under *Erie*).

948 (10th Cir. 2018) (alterations in original). And the cited Eighth Circuit decision based its conclusion about the "modern rule" on *existing* state law—specifically, on a "well-established principle of Iowa law" that "is the very premise upon which [that rule] is based." *Avnet v. Catalyst Res. Grp., LLC*, 791 F.3d 899, 902–903 (8th Cir. 2015).[4] A cited Eleventh Circuit decision similarly concluded that a position "is legally sound under Florida law" and accordingly applied it. *SA Palm Beach, LLC v. Certain Underwriters at Lloyd's Lond.*, 32 F.4th 1347, 1359 (11th Cir. 2022); *see also Guideone Elite Ins Co. v. Old Cutler Presbyterian Church, Inc.*, 420 F.3d 1317, 1327 (11th Cir. 2005) (interpreting an insurance policy term based on how "Florida courts have already defined and applied" it).

The petition similarly suggests that the Seventh Circuit "professes to 'anticipate changes to state law.'" Pet. 21. But the petition's quoted language is drawn from the Seventh Circuit's statement that "we shall not anticipate changes to state law" as a general matter. *Hollander v. Brown*, 457 F.3d 688, 692 (7th Cir. 2006). The opinion clarified that a legal position would apply only if "concrete evidence" supports that the state court would adopt it "today"—that is, based on existing state law supporting it. *Id.* And the Seventh Circuit even discouraged litigants from seeking to base claims in federal court "on an innovation in state law." *Id.*

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[4] Similarly, the Second Circuit in *Michalski v. Home Depot, Inc.* reached its conclusion about state law based on existing "state policy" and "precedent." 225 F.3d 113, 120 (2d Cir. 2000).

The petition also mistakenly implies that the Third Circuit allows "anticipated changes in state law" to be applied in defiance of a state highest court's decision. Pet. 20. The cited Third Circuit decision instead "recognize[d] [the court's] responsibility to accurately apply the pertinent [state] law." *McKenna v. Ortho Pharm. Corp.*, 622 F.2d 657, 664–666 (3d Cir. 1980). The Third Circuit decided that a later state highest court decision, understood to have "reject[ed]" the earlier one, was the pertinent state law that the state's highest court "would decide" to follow. *Id.* at 664–666, 661. Thus, the court applied existing state law, including changes already effected by a state highest court's decision. *Id.*

The petition's criticism of one of Justice Alito's Third Circuit opinions similarly misses relevant reasoning. Pet. 20. The petition complains that the Third Circuit there sought to "'predict' how the state supreme court would decide the question before" it. *Michaels v. New Jersey*, 150 F.3d 257, 259 (3d Cir. 1998). But the petition overlooks that Justice Alito concluded there was "no choice but to" make such a prediction under this Court's *Erie* jurisprudence, absent any preferred permission to certify questions to the state supreme court. *Id.*

As to the Ninth Circuit, the cited opinions do not bear out the petition's suggestions of a willingness to "alter" and "expan[d]" existing state law. Pet. 27, 22–23. The petition's cited decisions (Pet. 22–24, 27–29) each affirm the court's intent to be "solely guided by" or "follow" state law, as the court understood it to exist. *In re K F Dairies, Inc.*, 224 F.3d 922, 924 (9th Cir. 2000); *Pacheco v. United States*, 220 F.3d 1126, 1131 (9th Cir. 2000); *see Paul v. Watchtower Bible & Tract*

Soc'y of N.Y., Inc., 819 F.2d 875, 878, 879 (9th Cir. 1987) (declaring that "we apply state law," and describing the state court practice as "the governing rule here"); *Torres v. Goodyear Tire & Rubber Co.*, 867 F.2d 1234, 1236, 1238–1239 (9th Cir. 1989) (declaring that "we must apply Arizona substantive law" which "has not adopted" the relevant doctrine); *Marin Tug & Barge, Inc. v. Westport Petrol.*, 271 F.3d 825, 831–834 (9th Cir. 2001) (rejecting plaintiffs' claim by "[l]ooking at [the relevant state's tort] law as a whole," determined by reference to existing state court decisions); Pet. App. 53a–54a, 47a–48a (determining that a state statute applies, "[b]ased on the [state highest court's] own pronouncements"); Pet. App. 3a–4a (concluding that the relevant duty is owed "under [state] law," as the state's highest court "would recognize" it based on legal principles in its existing decisions).

As with the other cited circuit decisions, the petition's reference to these circuit opinions leaves out meaningful context. The quoted portion of *Paul* concerns an issue that the court said it "need not decide" and omits that for the issue that *was* decided, the existing state court practice was treated as "the governing rule." 819 F.2d at 879. The quoted portion of *Torres* makes the same mistake about *Paul*, and it omits that the *Torres* opinion *expressly avoided* the very analysis that the petition criticizes (Pet. 22).[5] The quoted language about "flexibility" and "common sense" from *Pacheco* omits that the decision confined such analysis to "follow" the state's "legal guidelines"

[5] *See Torres*, 867 F.2d at 1238–1239 (expressly "hesitat[ing]" to "extend the law" without basis from the state courts or legislature, and declining to "make" the "choice . . . for the State," instead certifying a state-law question to the state's highest court).

laid out in its existing state court decisions. 220 F.3d at 1131–1132.

3. The petition criticizes several circuit decisions for, in the petition's view, considering various "sources," "legal concepts," or "trend[s]" in deciding state-law questions. *See, e.g.*, Pet. 20–22. This Court's instruction to federal courts, as the petition admits (Pet. 26), has been to determine state law in the same manner as it would federal law: "with the aid of such light as [is] afforded by the materials for decision at hand, and in accordance with the applicable principles for determining state law." *Salve Regina Coll. v. Russell*, 499 U.S. 225, 227 (1991). This Court has also instructed federal courts to "ascertain . . . what state law is" from "*all* the available data." *West*, 311 U.S. at 237 (emphasis added). And this Court has encouraged federal courts, in interpreting "the meaning of a [state] statute," to take account of "the method by which" a state court would "determine" the statute's "extent and limitations." *Smiley v. Kansas*, 196 U.S. 447, 455 (1905).

The petition argues that *Erie* requires an "asymmetry between federal and state forums." Pet. 28, 21. To the contrary, this Court has explained that, under *Erie*, "the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court." *E.g.*, *Walker v. Armco Steel Corp.*, 446 U.S. 740, 745, 752–753 (1980) (quoting *Guar. Tr. Co. v. York*, 326 U.S. 99, 109 (1945)); *Felder v. Casey*, 487 U.S. 131, 151 (1988) (same). "[A] federal court adjudicating a matter of state law in a diversity suit [is], 'in effect, only another court of the State.'" *King*, 333 U.S. at 161. This Court's decisions thus

undercut the notion, which the petition seeks to justify (Pet. 28), that "the substantive rule applied to a dispute may depend on the choice of forum." *Salve Regina Coll.*, 499 U.S. at 234; *see Semtek*, 531 U.S. at 508–509.

Thus, the petition's criticisms of the circuit decisions are misplaced. Even to the extent they entail differences, any minor variations in terminology informed by the specific state-law question presented do not constitute a methodological split in how the different circuits resolve questions of state law in diversity cases. This Court's review is unwarranted.

II. The court of appeals decision does not implicate the question presented and was not in error in any event.

1. Even if the petition had demonstrated some conflict between the circuits on the question presented (which it has not), review would not be warranted because the question presented is not implicated here. The court of appeals decision did not purport to issue a ruling about *Erie*, or to reject an approach of "apply[ing] existing state law" (Pet. i). *See* Pet. App. 46a–59a.

To the contrary, the court of appeals described its decision as an application of existing state law. In reaching its decision that "Uber owed plaintiff a duty to exercise reasonable care regarding her safety," the court of appeals extensively invoked and catalogued the existing state law that it applied. Pet. App. 47a–59a. In addition to the cited state statute, that state law included the decisions of the state's highest court that espoused the well-established state tort-law principles that applied in this case. *See* Pet. App.

47a–59a (citing, *e.g.*, Cal. Civ. Code § 1714(a); *Kuciemba v. Victory Woodworks, Inc.*, 531 P.3d 924 (Cal. 2023); *Lugtu v. Cal. Highway Patrol*, 28 P.3d 249 (Cal. 2001); *Rowland v. Christian*, 443 P.2d 561 (Cal. 1968); *Trope v. Katz*, 902 P.2d 259 (Cal. 1995); *Weirum v. RKO Gen., Inc.*, 539 P.2d 36 (Cal. 1975); *Cabral v. Ralphs Grocery Co.*, 248 P.3d 1170 (Cal. 2011); *Kesner v. Superior Ct.*, 384 P.3d 283 (Cal. 2016); *Regents of the Univ. of Cal. v. Superior Ct.*, 413 P.3d 656 (Cal. 2018)).

Thus, *applying* state law, the court of appeals relied on the state highest court's decisions interpreting the state statute on the ordinary duty of reasonable care. Pet. App. 47a–48a, 50a–55a, 57a–59a. The court of appeals explained how that duty encompassed the relevant duty of care here, including with respect to exposure to risk of harm from third parties. Pet. App. 47a–48a, 50a–55a, 57a–59a.

The court of appeals decision consisted of application of existing state law. The decision did not make new law. Nor did it even predict any innovation or change by the state's highest court as compared to what the court of appeals understood to follow from that authoritative state court's prior decisions. This is consistent with the petition's preferred approach and what the petition describes as consistent with *Erie*. The decision provides no basis for granting certiorari in this case.

2. Petitioners nevertheless attempt to inject an issue under *Erie* by repeatedly referencing the separate opinion in the court of appeals. Pet. 5, 14, 16, 22–24, 28. But that separate opinion did not reference *Erie* for its primary point of disagreement with the court

of appeals decision on how state law applied to the particular factual circumstances in this case. *Compare* Pet. App. 47a–59a, *with* Pet. App. 60a–66a. Nor did the separate opinion reference *Erie* on the question presented by this petition, concerning whether to "apply existing state law" or "predict changes in state law" (Pet. i). The separate opinion's only reference to "our *Erie* role" concerned whether to rely on a particular earlier Ninth Circuit decision on a different issue than the petition's question presented. Pet. App. 62a. Specifically, the separate opinion complained that the earlier Ninth Circuit decision had invoked *state* court decisions, rather than only certain federal court decisions, on whether to "give weight" to the state highest court's denial of review of an intermediate appellate court decision. Pet. App. 62a. Accordingly, the separate opinion does not provide a basis to find that the question presented is implicated by the decision in this case.

3. The petition also objects that the court of appeals found an intermediate state court decision to be inconsistent with decisions of the state's highest court. Pet. 12–14, 24. But the petition identifies no error under this Court's decisions based on *Erie*. In *Erie* itself, this Court described "the law of the State" as being that "declared by its Legislature in a statute *or by its highest court in a decision*." 304 U.S. at 78 (emphasis added). *Erie* expressly overruled *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842), as to whether federal courts exercising diversity jurisdiction need "apply the unwritten law of the State *as declared by its highest court*." 304 U.S. at 71 (emphasis added). In *West*, this Court confirmed that even where an intermediate state court decision may be considered, the ultimate

question is what "*the highest court of the state* would decide." 311 U.S. at 237 (emphasis added); *id.* at 236 ("[T]he highest court of the state is the final arbiter of what is state law."). And in *Commissioner v. Bosch's Estate*, this Court emphasized that lower state court decisions are "not controlling . . . where the highest court of the State has not spoken on the point"; that "federal authority may not be bound even by an intermediate state court ruling"; and that "the State's highest court is the best authority on its own law." 387 U.S. 456, 465 (1967). Indeed, in *King*, this Court held that a federal court of appeals "was justified in holding the decision" of a state lower court "not controlling" and instead "proceeding to make its own determination of what the [state's highest court] would probably rule in a similar case." 333 U.S. at 161.

The court of appeals was not bound to follow an intermediate state court's opinion in another case that the court of appeals found inconsistent with the law of the state's highest court. As the court of appeals noted, in California, intermediate appellate court opinions are not binding on other intermediate appellate courts. Pet App. 72a; *Auto Equity Sales, Inc. v. Superior Ct. of Santa Clara Cnty.*, 369 P.2d 937, 940 (Cal. 1962); *see, e.g.*, *Jessen v. Mentor Corp.*, 158 Cal. App. 4th 1480, 1489 n.10 (Ct. App. 2008). This Court in *King* affirmed that a decision is "not controlling," even on an "almost identical" issue to the one decided, where the state's "own judicial system" does not render that decision an "authoritative exposition[] of that State's 'law.'" 333 U.S. at 156, 161; *id.* at 161 (concluding that "it would be incongruous indeed to hold the federal court bound by [such] a decision").

The petition is similarly mistaken in making substantive inferences in petitioners' favor about state law based on the state highest court's declining to hear a question certified by the court of appeals. *See* Pet. 10–11, 14, 19, 22–23, 5. The state's highest court has declared it "well established that 'our refusal to grant a hearing in particular case is to be given *no* weight.'" *See* Pet. App. 48a n.2 (quoting *Trope*, 902 P.2d at 268 n.1); *see also Camper v. Workers' Comp. Appeals Bd.*, 836 P.2d 888, 894 n.8 (Cal. 1992) ("[W]e reiterate the well-established rule in this state that a denial of a petition for review is not an expression of opinion of the [California] Supreme Court on the merits of the case.").

Such reasoning is consistent with this Court's longstanding rule that declining a petition for certiorari "imports no expression of opinion upon the merits of the case." *United States v. Carver*, 260 U.S. 482, 490 (1923). A highest court exercising its discretion not to accept or review a particular question generally is not understood to answer that question. Thus, no review is warranted by the petition's assertion of a "stark[] contrast[]" between courts applying different states' laws regarding the legal significance of the particular state's "high-court denials." Pet. 22–23.

In any event, the court of appeals decision's application of existing state law did not change or "predict changes in state law" (Pet. i), let alone present any *Erie*-based error in so doing. The relevant state statute provides for a generally applicable duty of care. Cal. Civ. Code § 1714(a). The state's highest court has interpreted that statute as entailing a duty "not to expose others to an unreasonable risk of injury at the hands of third parties," such as by conduct that

"created" or "contribute[d]" to the plaintiff's risk of harm. Pet. App. 47a–48a, 50a–55a (quoting and citing, *e.g.*, *Lugtu*, 28 P.3d at 257; *Kuciemba*, 531 P.3d at 939–940). *Contra* Pet. 12, 5, 33. This Court has confirmed that a federal court "ha[s] no authority to construe the language of a state statute more narrowly than the construction given by that State's highest court." *City of Chicago v. Morales*, 527 U.S. 41, 61 (1999) (citing *Smiley*, 196 U.S. at 455); *see Fid. Union Tr. Co. v. Field*, 311 U.S. 169, 178–179 (1940) (federal court is "not at liberty" to depart from "the construction and effect which the State itself accorded to its statute"). Thus, the court of appeals acted properly in affording the state statute the effect that state law, as determined by the state's highest court, would demand.

If anyone, it is *Uber* that sought to change the law—which is the very practice Uber criticizes (*e.g.*, Pet. 19–20)—by seeking the "creat[ion] [of] an exception" to the ordinary-care duty under the state court *Rowland* decision. Pet. App. 70a, 77a; *see* Uber C.A. Br. 55–62. As the state's highest court has confirmed, such a *Rowland* analysis concerns "not whether a *new duty* should be created, but whether an *exception* to Civil Code section 1714's duty of exercising ordinary care in one's activities . . . should be created." *Cabral*, 248 P.3d at 1182. Likewise, it is *Uber* that sought to have an intermediate state court decision's different test (a "necessary component" test) injected into state law, notwithstanding the state highest court's decisions establishing legal principles that the court of appeals found "irreconcilable" and "plainly inconsistent" with that test. Pet. App. 48a–53a. Uber cannot prevail in obtaining review seeking to achieve an

outcome that would depend upon rejection of its petition's argument.

III. The petition seeks unwarranted review of factbound application of state law, which is unlikely to affect the result in this case.

1. Even setting aside the petition's defects recounted above, this case is a poor vehicle for considering the question presented. Uber seeks review on grounds that concern highly factbound application of state-law questions.

Uber's own petition reinforces that Uber seeks a factbound, state-law-bound review. The petition's central argument is that the purportedly "almost identical *facts*" of the intermediate state court decision in *Doe No. 1* justify supplanting the state highest court's state tort-law rulings. Pet. 24 (emphasis added). In so arguing, Uber elides that the court of appeals ruled in favor of Jane Doe, and rejected Uber's fact-intensive reliance on the intermediate state court, including by reference to factual details such as those about the record in this case. *See* Pet. App. 48a–59a.

For example, the court of appeals highlighted "Uber's affirmative conduct" through its "novel business model," "active encouragement of vulnerable users . . . through marketing and . . . remote ordering capability," "reliance by app users on Uber's promotion of safety and its decals, which it did not require terminated drivers to return," and "previous incidents involving imposter drivers that had reached 'crisis levels.'" Pet. App. 55a–56a. The court also emphasized that Jane Doe "has identified numerous examples of similar incidents" and "evidence that Uber was

aware of these incidents" prior to her assault. Pet. App. 57a. The court's "crisis levels" quotation was from Uber's own policy team. 2-ER-276–278. And the court's reference to "previous incidents" and "similar incidents" of which Uber was aware encompassed the many catalogued in the briefing and record. Jane Doe C.A. Br. 7–9 (citing, *e.g.*, 3-ER-421–25; 4-ER-883–884; 4-ER-888–892; 2-ER-218; 2-ER-240–41; 3-ER-391–403; 5-ER-936–938; 5-ER-940–942; 5-ER-962–964); *see also, e.g.*, Jane Doe C.A. Reh'g Opp. 4–5 (citing, in addition, 3-ER-336–346; 3-ER-354–361; 3-ER-387–390; 3-ER-435–438; 4-ER-811; 4-ER-816; 4-ER-824–825; 4-ER-831–834; 5-ER-945–947; 5-ER-951–953; 5-ER-956–958; 5-ER-966–967; 5-ER-969; 5-ER-971–972).

A comparison between the court of appeals decision and the separate opinion further illustrates the factbound and state-law-bound nature of the review Uber seeks. The opinions disputed whether the intermediate state court decision in *Doe No. 1*—which the separate opinion deemed to be "on-point precedent" due to its facts (Pet. App. 63a–64a) as Uber urges (Pet. 24)—should be treated as the state law to be followed by the federal court in this case. *Compare* Pet. App. 47a–57a & nn.2–3, *with* Pet. App. 62a–64a. Review in this case could entail avoidance of any federal legal issue by rejecting Uber's and the separate opinion's grounds for reaching it, by determining that *Doe No. 1* was not as factually "on-point" as they assert, or that state law does not support reliance on it. And, although reaching the substantive state-law issue would not fit the purportedly federal question presented here, the petition illustrates that Uber might well seek to have this Court take positions on the

state-law analysis by the court of appeals. *See, e.g.*, Pet. 5, 12, 24, 32, 33. If so, this Court could become inappropriately mired in argument about the particular state-law tort principles espoused by the various state court decisions, whether some are "irreconcilable" or "plainly inconsistent" with others, as the court of appeals decided (Pet. App. 50a–51a), and how those principles do or do not apply in the factual context of this case. *Compare* Pet. App. 50a, *with* Pet. App. 64a.

Factual disputes, particularly concerning the application of state law, are generally unworthy of this Court's review. *See, e.g.*, Sup. Ct. R. 10 (certiorari is "rarely granted" based on errors of fact or "misapplication" of law, and instead typically concerns "important" questions of "*federal*," not state, "law" (emphasis added)). The petition should not succeed in drawing this Court into an examination of the parameters of state negligence law, or its application to case-specific facts, simply by donning the vestiges of *Erie*. As discussed, this Court's *Erie* jurisprudence is well-developed; the courts of appeals are not in clear conflict with each other or this Court over the question presented; and the petition's sought assessment under that federal doctrine could inappropriately bog down this Court in the factual and state-law-specific disputes underlying this case.

2. Review by this Court is unwarranted for the further reason that it would be unlikely to affect the decision in this case in any event. The question presented concerns only whether a federal court should "apply existing state law" or "predict changes to state law." Pet. i. As explained, this court of appeals decision applied existing state law, and its reasoning does not appear to depend on any change in direction by

the state's highest court. Thus, no ruling on the question presented would be likely to change the analysis in this court of appeals decision, let alone its outcome. The court of appeals decision could continue to rest on its application of existing state law. And the outcome on remand would remain undetermined due to liability issues left unresolved. Pet. App. 59a.

Thus, this Court's expenditure of limited resources on review of this case need not be expected to alter the case's outcome, or even the analysis leading to that outcome. Review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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