No. 24-750

IN THE
SUPREME COURT OF THE UNITED STATES

MARTHA ADAMS and all other OBJECTORS,
Petitioners,

v.

ANGELO RESCIGNO, SR., as EXECUTOR OF THE ESTATE OF CHERYL B. CANFIELD, and EQUINOR USA ONSHORE PROPERTIES, INC. (f/k/a STATOIL USA ONSHORE PROPERTIES, INC.),
Respondents.

On Petition for Writ of Certiorari
To the United State Court of Appeals for the Third Circuit

REPLY TO BRIEFS IN OPPOSITION

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INTRODUCTION

When a proposed class action is settled, it takes an exercise of judicial power to make the settlement binding on settlement class members. *See* Erichson, Howard M., *The Problem With Settlement Class Actions,* 82 Geo. Wash. L. Rev. 951, 958 (2014) (hereinafter, "Erichson II"). This case presents important questions about how courts exercise that power as fiduciaries to class members.

Respondents complain that Petitioners and their counsel have been fighting this settlement for a while. That is true. What is also true is that the broadly defined settlement class fronted by a named plaintiff with a dismissed index price method claim should not have been certified, and the settlement should not have been approved.

To Respondents, this case reflects how lower courts routinely exercise their power to certify settlement classes and approve class settlements. Respondents' arguments amplify the importance of this Court addressing both questions the petition presents. The court of appeals' policy driven approach leaves absent class members vulnerable to "appraisals of the chancellor's foot kind." *See Amchem v. Windsor,* 521 U.S. 591, 621 (1997).

ARGUMENT

I. This Case Presents the Important Question Whether Settlement Class Certification Requires Proof that the Class Definition Excludes the Uninjured

This Court has recognized that it is important to determine how Article III's jurisdictional limits apply to the breadth of a class. *TransUnion v.*

Ramirez, 594 U.S. 413 (2021), addressed whether there must be proof of injury to all class members at the remedial stage. *Laboratory Corp. of America Holdings v. Davis,* No. 24-304, will address "whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury."

The jurisdictional question in this case connects to *TransUnion* and *Laboratory Corp.* by addressing the third leg of the stool: does a settlement obviate the need for proof that the class does not include the uninjured? Because a judgment making the settlement terms binding on absent class members is an exercise of judicial power, Article III concerns "are not to be ignored." *Mr. Dees, Inc. v. Inmar, Inc.,* 27 F.4th 925, 934 (4th Cir. 2025).

This case presents an appropriate vehicle to resolve how Article III's jurisdictional limits apply to settlement classes. The settlement arises in a case where the complaint asserted multiple claims, only one of which survived a motion to dismiss. While the district court found that Equinor's index price method gives named plaintiff his lease's express bargain, the settlement nonetheless purports to resolve the dismissed index price method claim for a class holding 30 different lease forms. The settlement has both backward-looking and forward-looking terms.

The court of appeals held that the jurisdictional inquiry at the time of judgment looks at the named plaintiff; accepted generalized allegations of harm rather than requiring proof that the class definition excludes the uninjured; and did not separately consider each claim and each form of relief. App.8a-

9a. That is, the court of appeals treated settlement as dispensing with the matters of proof that *TransUnion* requires at the remedial stage for each distinct claim and each distinct form of relief for everyone within a class definition.

The recent Fourth Circuit decision in *Alig v. Rocket Mortgage,* 2025 WL 271563 (4th Cir. January 23, 2025), shows how the decision below stretches Article III to accommodate the parties' settlement. *Alig* was before the Fourth Circuit a second time because this Court vacated the Fourth Circuit's original opinion after *TransUnion*. This time, the Fourth Circuit rejected the notion that generalized assertions of injury are sufficient to establish Article III jurisdiction to enter judgment for a class:

> Following *TransUnion,* it is … clear that to recover damages from the defendants, "*[e]very class member must have Article III standing*" "for each claim they press," requiring proof that the challenged conduct caused each of them a concrete harm. 594 U.S. at 431 (emphasis added). It is equally clear that, to establish their standing to recover damages, the Plaintiffs *cannot rely on a mere risk of future harm. Id.* at 437 (emphasis added).

Alig, 2025 WL 271563 at *7; *see also Mr. Dee's Inc.,* 127 F.4th at 934 ("Our circuit has also underscored the importance of standing concerns in class action litigation.").

Equinor, which did not respond when Petitioners raised *TransUnion* in the district court, *see* Petition at 13, 32 n.14, App.16a-25a., and class

counsel argue that Petitioners have not identified any uninjured class members. But Petitioners do not have to disprove jurisdiction. Named plaintiff must prove jurisdiction. *See* Petition 33-34. Class counsel's argument that Federal Rule of Civil Procedure 23(e)(5) shifted the burden to Petitioners creates a Rules Enabling Act, 28 U.S.C. § 2072, problem by allowing settling parties to confer and expand jurisdiction through a class settlement agreement.

Further, Respondents, like the court of appeals, ignore the fact that the district court dismissed named plaintiff's breach of contract claim because the index price method gives named plaintiff the express bargain of his "at the well" lease. Class counsel wrongly asserts that "at the well" relates only to a lessor's ability to take post-production cost deductions. As the district court recognized, the wellhead is a point of royalty valuation, which is why named plaintiff was not injured by the index price method. App.147a. [1]

While the complaint alleged an injury from the index price method, at the time the court was asked to use its power to approve the settlement there was an unchallenged finding that Equinor's index price method did not injure named plaintiff (or anyone else whose lease contains his royalty term for that matter).[2] *See Spokeo Inc. v. Robins,* 570 U.S. 330, 340

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[1] The assertion is one of a number of mistakes in class counsel's brief.

[2] Class counsel asked the district court to use its power to enter a remedial judgment for the class, rather than pursue named plaintiff's lone implied duty to market claim or do anything to seek appellate review of the district court's dismissal of the index price method claim. Given the district court's unchallenged conclusion that the index price method gave named plaintiff the

(2016) ("A 'concrete' injury must be '*de facto*'; that is, it must actually exist. ... When we have used the adjective 'concrete,' we have meant to convey the usual meaning of the term — 'real,' and not 'abstract.'"); *see also id.* at 338 n.6. Also, Respondents cannot point to any evidence showing that named plaintiff as the executor of an estate with a dismissed index price method claim has a stake in the post-Effective Date settlement terms. *See* Petition at 35.

As to the Stines (who only get a passing mention in a footnote late in class counsel's brief), they did not assert any claims in a complaint so there is no way to tell whether they have a concrete injury or any personal stake in any form of relief. And there is no way without the leases in the record for a court to determine whether any "miscellaneous" lease has a term that permits royalties based on an index price. *See* Petition at 32, 35.

Respondents' arguments about the class definition fall flat. They ignore the requirements in Rule 23(e) for a showing that the settlement class can be certified "for purposes of judgment," and in Rule 23(c)(1)(b) for an order that defines "the class claims, issues, or defenses." *See* Fed. R. Civ. P. 23(e)(1)(B) and (c)(1)(b). Respondents do not identify any such order. Instead, they rely on the district court's attempt, after Petitioners raised *TransUnion* in that court, to re-imagine the class definition by digging through the Settlement Agreement for terms that might limit the

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benefit of the lease's express bargain, no reasonable fact finder could have concluded at the time named plaintiff asked for a judgment that he had suffered a concrete injury from the index price method. *See Tyson Foods, Inc. v. Bouaphako,* 577 U.S. 442, 459 (2016).

class definition. Respondents' position does not stand up to the class defined either in the preliminary approval order or the Settlement Agreement. Neither limit the class to those who, for a specified period, have been paid royalties on leases that, unlike named plaintiff's lease, do not permit the index price method. *See Mullins v. Direct Digital, LLC,* 795 F.3d 564, 559-660 (7th Cir. 2015) ("To avoid vagueness, class definitions generally need to identify a particular group, harmed during a particular time frame, in a particular location, in particular way.").

Class counsel says there is a spreadsheet showing Equinor's royalty payments before July 2017, but there is no spreadsheet in the record. Moreover, class counsel's description of the document does not match the class definition. The class is not defined as those to whom Equinor paid royalties before July 2017. Even if it were defined that way, a court would still have to look at the leases' royalty terms the same way the district court looked at named plaintiff's lease when it dismissed the index price method claim. Class counsel's opinions about the leases do not provide an evidentiary basis for a remedial stage exercise of judicial power over the settlement class.[3]

In sum, this case provides an opportunity for this Court to address whether a federal court must assess jurisdiction to enter a judgment for a settlement class on a claim-by-claim basis for each member of the class for each form of relief as an evidentiary matter, rather than as a pleading matter

[3] Otherwise, settlement checks sent based on the spreadsheet to class members with royalty terms like named plaintiff's lease will dilute injured class members' recoveries.

limited to named plaintiff. The answer will be significant for courts asked simultaneously to certify a broad settlement class and approve a settlement.

II. This Case Presents the Important Question Whether Rule 23's 2018 Amendments Allow the Exercise of Judicial Power Based on a Policy That Favors Settlement and Presumes Fairness

In 1997, this Court decided *Amchem* based on Rule 23 as then written. 519 U.S. at 620. Respondents do not dispute that the 2018 amendments to Rule 23 materially changed the settlement approval process, that this Court has not addressed the amendments, or that this Court's guidance on how courts must uniformly apply the amended Rule's text is important. Instead, they want this Court to provide that guidance some other time. Respondents would leave intact the circuits' existing divergent positions about whether class settlements get a policy preference outside the Rule's amended text.

Rule 23 as now written required class counsel to prove that the class likely could be certified before the district court approved class notice. *See* Petition at 17-19. Class counsel, representing a named plaintiff with a dismissed index price method claim, settled the index price method claims for a broad settlement class believing from the outset that *no class* (not just the settlement class) likely could have been certified to litigate the claim. *Id.* at 22. Unless *Amchem* is no longer good law after Rule 23's 2018 amendments, the lower courts could not have concluded that the class was adequately represented. *See Amchem,* 519 U.S. at 621 ("if a fairness inquiry…controlled certification, eclipsing Rule 23(a)

and (b), and permitting class designation despite the impossibility of litigation, both class counsel and court would be disarmed. Class counsel confined to settlement negotiations could not use the threat of litigation to press for a better offer … .") (citations omitted); *see also* Petition at 21-22 (amendments codify *Amchem*).

Respondents argue that there is no conflict among circuits about whether Rule 23's text permits a policy driven presumption of fairness because the Third Circuit applies different factors. That does not mitigate the conflict. Rather, it reinforces the need for this Court's guidance to ensure uniformity in how courts apply Rule 23's settlement-related provisions. Respondents' argument suggests that each circuit should be left to make its own policy about settlement classes and class settlements. That approach has no support in Rule 23's text or case law. Rule 23's amendments focus all courts on a single set of core concerns. Petition at 18-20, 28.

A malleable freedom to stray from Rule 23's text based on a circuit-by-circuit policy conception distorts that focus. If courts start with a preference for approving the deal the parties struck, then class members' interests become secondary to the settlement proponents' stakes in having a settlement approved. *See* Erichson, Howard M., *Aggregation as Disempowerment: Red Flags in Class Action Settlements,* 92 Notre Dame L. Rev. 859, 871 (2016) ("[T]he question is whether class counsel negotiated in the best interests of the class, as opposed to negotiating a deal that would appeal to the defendant, appear satisfactory to an uninquisitive judge, and serve class counsel's self-interest."); *see also* Erichson

II, 82 Geo. Wash. L. Rev. at 958-960 ("The settlement class action presents a particularly troubling kind of monopsony problem. … The settlement class action lawyer, negotiating to sell something that she does not yet have, has only one way to get the thing she wishes to sell, and that is by striking a deal.").

Respondents ignore how the lower courts' policy choice to favor settlement infected the lower courts' decisions, which excused holes in the record. *See* Petition at 23-27 (addressing settlement class certification), 28-31 (addressing settlement approval). For instance, to this day, Respondents cannot point to any analysis of the value class members are giving up to Equinor from the settlement's post-Effective Date bars on claims. Class counsel's representation that L29 leases are not re-written is wrong. *Compare* App.255a, 259a-260a (Settlement Agreement L29 term) *with* App.126a-131a (arbitration decision construing L29 lease) *and* J.A. 0151, ECF38 (version of L29 that does not ever allow deductions).[4]

There are other examples of how a settlement preference lowered the bar. Neither Respondent defends the Stines' appointment as adequate class representatives based solely on the settling parties' agreement. Class counsel does not dispute that they did not file a class certification motion and acknowledges that the so-called Rainbow Chart of lease categories was submitted to support the settlement, not class certification. Rescigno Brief at

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[4] The L29 settlement term allows Equinor to automatically deduct post-production transportation costs, even though the class notice told class members, and class counsel argues, that the case did not release post-production cost deduction issues. *See* J.A. 451, ECF 38.

6. A policy preference for settlement excused the lack of a fully supported certification motion, then justified certifying a broad settlement class based on a chart showing five lease categories filed for a different purpose. *See* Petition at 23-24.

Class counsel says that all leases included in the broad settlement class are the same. Not so. Courts looking at leases different from named plaintiff's lease have concluded that different lease language gives rise to a claim that the index price method breaches the lease, unlike named plaintiff's lease. *See* Petition at 6-7.

Class counsel also says that Petitioners' counsel's other filings show they agree that all leases are the same. Again, not so. Notably, the intervention complaint the district court rejected alleged that leases with named plaintiff's "at the well" royalty language are different. J.A. 556, ECF 38. Anyway, Rule 23 does not allow a judge to decide class certification by taking Petitioners' counsel's or class counsel's word about the leases. The Rule requires the leases to be in the record for the court's own rigorous review.

Finally, class counsel's arbitration clause arguments reinforce the importance of the Rule 23 question presented here. This case provides an opportunity to address Rule 23's settlement-related provisions when the settlement class includes (predominately) parties to arbitration agreements. Class counsel seeks to devalue most class members' claims compared to named plaintiff's valueless dismissed claim, and dispense with a strict application of Rule 23 because of arbitration clauses in the leases. There is no authority for that. *See*

Morgan v. Sundance, 596 U.S. 411, 418 (2022) (FAA forbids arbitration specific procedural rules). Class counsel's assertion that the cost of arbitration justifies the approach in this case, where the proposal was to settle rather than arbitrate any claims,[5] conflicts with this Court's decisions characterizing arbitration as a more cost effective, efficient means of dispute resolution compared to litigation. *See, e.g., Stolt Neilson, S.A. v. AnimalFeeds International Corp.,* 599 U.S. 662, 685-685 (2010).

The cost of the *Kuffa* arbitration does not help class counsel in that regard. That test case aimed for a decision construing the L29 royalty provision in contrast to the district court's decision dismissing named plaintiff's index price claim. As that decision shows, L29 lessors have strong index price method claims while named plaintiff has no claim. *See* Petition at 6-7.

The courts below evaluated the settlement class and settlement under Rule 23 through the lens of a policy that leaned into approving the settling parties' deal. Two other circuits have found that Rule 23 as written does not make room for that policy-based approach. With class settlements much more likely than class trials, this case presents an important question about how courts are to apply Rule 23's text in their role as fiduciaries to absent class members when asked to approve a settlement for a settlement class.

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[5] *See Hill v. Xerox Business Services, LLC,* 59 F.4th 457, 471-477 (9th Cir. 2023) ("strategic choice to engage the judiciary for resolution of the class claims" waives arbitration).

CONCLUSION

For the foregoing reasons, and for the reasons expressed in the Petition, this Court should issue a writ of certiorari to hear the questions presented.

Respectfully submitted,

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