No. _____

In The
Supreme Court of the United States

Laura Canaday, Individually and On Behalf of All Others Similarly Situated,
Petitioners,

v.

The Anthem Companies,
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, permits employees to sue for unpaid minimum wages and overtime compensation on "behalf of…themselves and other employees similarly situated." 29 U.S.C. § 216(b). In these collective actions, similarly situated employees opt into the case by filing their "consent in writing" with the court. *Id.*

The question presented is:

Whether a federal court has the authority, absent general personal jurisdiction over the defendant or the defendant's consent, to maintain a Fair Labor Standards Act collective action that includes opt-in plaintiffs who worked for the defendant outside the state where the court is located.

PARTIES TO THE PROCEEDING

This case was filed by Petitioner Laura Canaday against Respondent The Anthem Companies. Invoking the Fair Labor Standards Act's collective-action provision, Canaday filed suit on behalf of herself and all others similarly situated.

After Canaday filed her complaint, 33 similarly situated employees opted into the suit by filing consent forms with the district court. They are: Candice Abdul, Wilma Abdulla, Katherine Adeojo, Deon Baker, Melissa Birdwell, Mary Bishop, Deborah Bousseau, Nicole Boyles, Felicia Brown, Crystal Carter, Kimberly Chatman, Jean Elmore, Latrice Gainey, Kewanna Gordon, Cindy Harrison, Lynn Hudak, Marcelia Langford, Christine Latine, Leslie Lazaar, Patrice Leflore, Lidia Lilly, Leah Maas, Anna Martin, Nicole Mateja, Winifred Midkiff, Claire Moloney, LaQuanta Russell, Kelli Sellers, Erin Sherrill, Paula Skelley, Robin Sullivan, J. Lynnette Vialpando, and Joy Wallace-Grey.

RELATED PROCEEDINGS

This case arises from these proceedings:

- *Canaday v. Anthem Cos.*, No. 1:19-cv-01084-STA-jay (W.D. Tenn. Feb. 2, 2020);
- *Canaday v. Anthem Cos.*, No. 20-5947 (6th Cir. Aug. 17, 2021).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Laura Canaday, individually and on behalf of all others similarly situated, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's decision, App. 1a, is reported at 9 F.4th 392. The district court's decision, App. 54a, adopting the magistrate judge's report and recommendation, is reported at 439 F. Supp. 3d 1042. The magistrate's report and recommendation, App. 72a, is reported at 441 F. Supp. 3d 644.

JURISDICTION

The court of appeals entered judgment on August 17, 2021. App. 1a. It denied Canaday's timely petition for rehearing en banc on November 23, 2021. App. 1a. On January 26, 2022, this Court granted Canaday's application for a 30-day extension of time, to and including March 24, 2022, to petition for a writ of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

29 U.S.C. § 216(b) provides in pertinent part:

An action…may be maintained against any employer…in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives

his consent in writing to become such a party and such consent is filed in the court in which such action is brought. … The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor.

Rule 4 of the Federal Rules of Civil Procedure provides in part:

> (c) Service.
>
> > (1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served….
> >
> > …
>
> (k) Territorial Limits of Effective Service.
>
> > (1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:
> >
> > > (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;
> > >
> > > … or
> > >
> > > (C) when authorized by a federal statute.

The Fifth Amendment provides that "[n]o person shall be…deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment provides that "[n]o State shall…deprive any person of life, liberty, or property, without due process of law."

Complete versions of Section 216(b), Rule 4, and the Fifth and Fourteenth Amendments are included in the appendix to this petition. App. 98a, 100a, 112a, 113a.

INTRODUCTION

This case presents one of the most urgent questions arising today under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*: Does a federal court have the authority, absent general personal jurisdiction over the defendant or the defendant's consent, to maintain an FLSA collective action that includes opt-in plaintiffs who worked for the defendant outside the state where the court is located?

That question has sharply divided lower courts. It is also gravely important. Limiting federal court authority in the way employers propose "would splinter most nationwide collective actions, trespass on the expressed intent of Congress, and greatly diminish the efficacy of FLSA collective actions as a means to vindicate employees' rights." *Swamy v. Title Source, Inc.*, No. C 17-01175 WHA, 2017 WL 5196780, at *2 (N.D. Cal. Nov. 10, 2017). But even more than that: the question presented implicates fundamental principles about the exercise of

personal jurisdiction in group litigation in federal court. The same limitations employers seek to impose here threaten to cripple other types of aggregate litigation in federal court—including Rule 23 class actions and multi-district litigation ("MDL").

This Court should grant certiorari to resolve the split of authority and provide guidance on a jurisdictional question of exceptional importance.

Some back-of-the-envelope background frames the question and demonstrates the urgency of Supreme Court review. The FLSA permits employees to sue for unpaid minimum wages and overtime compensation on "behalf of…themselves and other employees similarly situated." 29 U.S.C. § 216(b). In these collective actions, similarly situated employees must file their "consent in writing" to be included in the action and bound by the judgment. *Id.*

For 79 years following the FLSA's enactment, no one questioned the authority of federal courts to entertain collective actions under the FLSA—including, of course, collective actions that include opt-in plaintiffs who worked for their employer outside the state where the action is maintained. *See, e.g.*, *Monroe v. FTS USA, LLC*, 860 F.3d 389, 398 (6th Cir. 2017); *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527, 536 (3d Cir. 2012). By their very nature, FLSA collective actions challenge common employment practices under a uniform federal law. *Monroe*, 860 F.3d at 398. And for the better part of

eight decades, parties and courts alike understood the geographic scope of any given collective action to be limited only by the breadth of the challenged employment practice itself. *Id.* This makes perfect sense: Congress enacted the FLSA's collective-action mechanism to promote "efficient resolution in one proceeding." *Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

In the past half decade, though, employers began asserting a novel and far-reaching limitation on FLSA collective actions. Employers now routinely argue that the Constitution and Federal Rules prohibit federal courts from exercising personal jurisdiction over employers with respect to the claims of any would-be opt-in plaintiffs who worked outside the state where the court is located.

The impetus for employers' newly proposed limitation is this Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). *Bristol-Myers* held that the California state courts lacked specific personal jurisdiction over a defendant with respect to state-law personal-injury claims of nonresident plaintiffs that arose entirely outside of California. *Id.* at 1782. *Bristol-Myers* broke no new constitutional ground. By its own terms, it applied "settled principles regarding specific [personal] jurisdiction." *Id.* at 1781.

But seizing on the superficial parallels between the proposed *state-court, state-law, mass-tort* action in *Bristol-Myers*, on one hand, and *federal-court*

FLSA collective actions, on the other, employers now insist that federal courts are powerless to maintain nationwide collective actions like this one.

And they don't stop there. Corporate defendants (and their amici) have tried to wield *Bristol-Myers* to attack all manner of representative and group litigation in federal court, including Rule 23 class actions and MDL proceedings. Courts' reception to these arguments has been mixed. *E.g.*, *Lyngaas v. Curaden Ag*, 992 F.3d 412, 433 (6th Cir. 2021); *id.* at 440 (Thapar, J., dissenting); *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 445–48 (7th Cir. 2020); *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 309 (D.C. Cir. 2020) (Silberman, J., dissenting); *In re Delta Dental Antitrust Litig.*, 509 F. Supp. 3d 1377, 1380 (J.P.M.L. 2020).

But nowhere has the disagreement in the lower courts been more acute than here. According to Petitioners' tally, 23 federal district courts have held that *Bristol-Myers* does not apply to FLSA collective actions. App. 114a. Twenty-four district courts have held just the opposite. *Id.*

The circuits are just as divided. The panel majority in this case held that *Bristol-Myers* applies to FLSA collective actions. *Canaday v. Anthem Cos., Inc.*, 9 F.4th 392, 397 (6th Cir. 2021); App. 10a. The Eighth Circuit reached the same conclusion. *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865 (8th Cir. 2021). The First Circuit reached the opposite conclusion. *Waters v. Day & Zimmermann NPS, Inc.*, --- F.4th ----, No. 20-1997, 2022 WL 123233, at

*7 (1st Cir. Jan. 13, 2022). So did Judge Donald, who dissented in this case. *Canaday*, 9 F.4th at 404 (Donald, J., dissenting); App. 26a.

The Court should grant review. Lower federal courts are divided. And the question presented is both recurring and important. *Bristol-Myers* precipitated a massive fight in the lower courts over when and how the decision applies to group litigation in federal court. Litigants file thousands of FLSA suits in federal court every year. Add in Rule 23 class actions and MDL litigation, and the number grows to *more than half* of all civil cases. And most of all: the question speaks to both the authority of federal courts to exercise jurisdiction and the constitutional limitations on the exercise of congressionally created rights—both matters "of very grave importance." *Liverpool, N.Y. & P.S.S. Co. v. Emigration Comm'rs*, 113 U.S. 33, 36 (1885).

This petition for certiorari should be granted.

STATEMENT OF THE CASE

I. LEGAL BACKGROUND.

This case involves the intersection of three bodies of law: the FLSA, including the statute's collective-action mechanism; personal-jurisdiction limitations enforced though the Fifth and Fourteenth Amendment Due Process Clauses; and service-of-process requirements contained in Rule 4 of the Federal Rules of Civil Procedure.

A. The FLSA.

Passed "[i]n the midst of the Great Depression…to combat…wages too low to buy the bare necessities of life" and "long hours of work injurious to health," *Schilling v. Schmidt Baking Co., Inc.*, 876 F.3d 596, 599 (4th Cir. 2017) (citations omitted), the FLSA established a uniform minimum wage, required time-and-a-half overtime pay, and outlawed oppressive child labor. *See* 29 U.S.C. §§ 206, 207, 212.

Congress sought to enforce the FLSA's core minimum-wage and overtime requirements by providing the right to employees to challenge illegal practices collectively. Just as it does today, the FLSA as originally enacted authorized suits brought "by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." Ch. 676, 52 Stat. 1060, 1069 (codified at 29 U.S.C. § 216(b)).

This collective-action mechanism promotes the congressional policy of ensuring uniform pay standards by "lower[ing] individual costs to vindicate rights by the pooling of resources," encouraging "efficient resolution in one proceeding." *See Hoffmann-La Roche*, 493 U.S. at 170.

Through the Portal-to-Portal Act of 1947, Congress added the requirement that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which

such action is brought." Ch. 52, § 5(a), 61 Stat. 84, 87 (codified at 29 U.S.C. § 216(b)).

This opt-in provision "codified the existing rules governing" so-called "spurious class actions"—opt-in representative actions recognized by the contemporaneous version of Rule 23. *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 257 (3d Cir. 2012); 7 W. Rubenstein, Newberg on Class Actions § 23.36 (5th ed. 2011). This point is significant because opt-in plaintiffs in such class actions were not required to independently satisfy the prerequisites of federal jurisdiction. *See* 2 J. Moore & J. Friedman, Moore's Federal Practice ("Moore's Federal Practice") § 23.04, pp. 2241–42 (1938).

B. Personal Jurisdiction.

Personal jurisdiction refers to a court's "power to bring a person into its adjudicative process." *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 491 (7th Cir. 2014) (citation omitted). Due process "constrains a [sovereign]'s authority to bind a…defendant to a judgment of its courts." *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (citing *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). Personal jurisdiction thus "represents a restriction on judicial power." *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

(1) The Fourteenth Amendment Due Process Clause limits state courts' exercise of personal jurisdiction.

The predominant body of precedent on personal jurisdiction addresses the Fourteenth Amendment due-process limitations on *state courts*, as instrumentalities of states as sovereigns, to bind foreign defendants to state-court judgments.

Under the Fourteenth Amendment's due-process inquiry, a state court may exercise personal jurisdiction over an out-of-state defendant that has "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). "[T]he defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there." *World–Wide Volkswagen*, 444 U.S. at 297.

This Court has recognized two strands of personal jurisdiction applicable to state courts under the Fourteenth Amendment. The first, general jurisdiction, allows a court to "hear any and all claims against [defendants] when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "The

paradigm forums in which a corporate defendant is at home…are the corporation's place of incorporation and its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (internal quotation marks omitted).

The second strand is specific, or "case-linked" jurisdiction. *Walden*, 571 U.S. at 283 n.6. Specific jurisdiction recognizes that "[w]here a defendant 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,' [the defendant] submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State." *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). The specific-jurisdiction analysis "focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 284 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). A state court may exercise specific jurisdiction "in a suit arising out of or related to the defendant's contacts with the forum." *Nicastro*, 564 U.S. at 881 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, n.9 (1984), and *Goodyear*, 564 U.S. at 923–24).

These limitations on state-court personal jurisdiction are rooted in notions of fairness to defendants. Due process "ensures that a defendant will not be haled into a jurisdiction solely as a result

of 'random,' 'fortuitous,' or 'attenuated' contacts." *Nicastro*, 564 U.S. at 903.

These same constraints are equally rooted in *interstate federalism concerns*. Due-process limitations on state-court personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Hanson*, 357 U.S. at 251. "[T]he States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State...implie[s] a limitation on the sovereignty of all its sister States." *World–Wide Volkswagen*, 444 U.S. at 293. The "Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 294. Due process thereby protects defendants from "submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Bristol-Myers*, 137 S. Ct. at 1780. "[A]t times, this federalism interest may be decisive." *Id.*

(2) The Fifth Amendment Due Process Clause limits federal courts' exercise of personal jurisdiction.

In *federal court*—in contrast to state court—personal jurisdiction is governed by the Fifth Amendment Due Process Clause. *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 449 (6th Cir. 2012). And under the Fifth Amendment analysis, "personal

jurisdiction exists whenever the defendant has 'sufficient minimum contacts with the *United States*'" *as a whole*. *Id.* (quoting *Med. Mut. of Ohio*, 245 F.3d at 566–67); *In re Sealed Case*, 932 F.3d 915, 925 (D.C. Cir. 2019); *Nicastro*, 564 U.S. at 884.

This national-contacts approach makes sense in light of the fundamental difference between state and federal courts. "[A]ll federal courts, regardless of where they sit, represent the same federal sovereign,"—the United States—"not the sovereignty of a…state government." *Sloan v. Gen. Motors LLC*, 287 F. Supp. 3d 840, 858–59 (N.D. Cal. 2018); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring); *Handley v. Ind. & Mich. Elec. Co.*, 732 F.2d 1265, 1271 (6th Cir. 1984).

Under the Fifth Amendment, therefore, "the interstate federalism concerns which animate fourteenth amendment due process analysis under *International Shoe* and its progeny are diminished." *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 294 n.4 (3d Cir. 1985) (citing von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1144–63 (1966)); *Handley*, 732 F.2d at 1271. Instead, the Fifth Amendment due-process inquiry "focus[es] more on the national interest in furthering the policies of the law(s) under which the plaintiff is suing." *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 371 (3d Cir. 2002).

C. Service of Process Provides Defendants with Notice of the Pendency of a Lawsuit.

"Service of process…is properly regarded as a matter discrete from a court's [personal] jurisdiction." *Henderson v. United States*, 517 U.S. 654, 671 (1996). *Compare* Fed. R. Civ. P. 12(b)(2) (defense of lack of personal jurisdiction) *with* Fed. R. Civ. P. 12(b)(5) (defense of insufficient service of process). "The core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections." *Henderson*, 517 U.S. at 672.

Service of process and personal jurisdiction are nevertheless conceptually linked: "Service of process…provide[s] a ritual that marks the court's assertion of jurisdiction over the lawsuit." *Washington v. Norton Mfg., Inc.*, 588 F.2d 441, 443–44 (5th Cir. 1979). In the absence of "proper service of process…a court may not exercise personal jurisdiction over a named defendant." *King v. Taylor*, 694 F.3d 650, 655 (6th Cir. 2012) (citations omitted).

Rule 4 governs service of process in federal court. The Rule's core operative provision states that "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 4(c)(1). "Serving a summons," in turn, "establishes personal jurisdiction over a defendant:" (1) "who is subject to

the jurisdiction of a court of general jurisdiction in the state where the district court is located," *id.* 4(k)(1)(A), or (2) "when authorized by a federal statute," *id.* 4(k)(1)(C).

D. *Bristol-Myers*.

The foregoing principles help frame this Court's decision in *Bristol-Myers*.

In *Bristol-Myers*, a group of 678 plaintiffs filed eight separate complaints in California state court against Bristol-Myers Squibb, 137 S. Ct. at 1778. The plaintiffs claimed injuries from taking Plavix, a drug manufactured and distributed by Bristol-Myers. *Id.* Among the plaintiffs, 86 resided in California. *Id.* The rest lived elsewhere. *Id.* More to the point: these nonresident plaintiffs alleged no meaningful connection to the state of California. They made no allegation that they were prescribed Plavix, injured by Plavix, or treated for their injuries in California. *Id.* Bristol-Myers, for its part, did not develop Plavix in California. *Id.* It did, however, conduct some unrelated activities in California. *Id.* And it sold Plavix in all 50 states. *Id.* The plaintiffs all stated 13 identical claims arising under California law. *Id.* Their claims were consolidated before a single state district court judge. *Id.*

The California Supreme Court held that Bristol-Myers was subject to specific personal jurisdiction in California. *Id.* It employed a "sliding scale approach" under which "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the

claim." *Id.* at 1779. Given Bristol-Myers' contacts with California generally, the California Supreme Court reasoned, specific jurisdiction existed, even with respect to the claims of nonresidents, because their claims "were similar in several ways to the claims of the California residents." *Id.* (citations omitted).

This Court reversed. *Id.* at 1777. Engaging in a "straightforward application…of settled principles of personal jurisdiction," the Court held that the California state courts lacked personal jurisdiction over Bristol-Myers with respect to the nonresident plaintiffs' claims. *Id.* at 1783. The Court reaffirmed that, under the Fourteenth Amendment due-process inquiry, specific jurisdiction requires an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." *Id.* at 1781 (quoting *Goodyear*, 564 U.S. at 919). That affiliation was absent, the Court reasoned, given that the "nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* Moreover, the Court observed, "[t]he mere fact that" *California-resident* plaintiffs engaged in these activities in California "d[id] not allow the State to assert specific jurisdiction over the nonresidents' claims." *Id.* "[A] defendant's relationship with a third party, standing alone," the Court explained, "is an insufficient basis for jurisdiction." *Id.* (quoting *Walden*, 571 U.S. at 286).

This Court's analysis may have been "straightforward," but it was far from mechanical. The Court reaffirmed that "[i]n determining whether personal jurisdiction is present, a court must consider a variety of interests." *Id.* at 1780. These include "the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice" as well as "the burden on the defendant." *Id.* "Assessing th[e] burden" on the defendant, the Court explained, requires more than simply evaluating "the practical problems resulting from litigating in the forum." *Id.* It "also encompasses the more abstract matter" of determining whether litigating in the plaintiff's chosen forum will force the defendant to "submit[] to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* "[A]t times," the Court explained, "this federalism interest may be decisive." *Id.* "[T]he States retain…the sovereign power to try causes in their courts." *Id.* (quoting *World–Wide Volkswagen*, 444 U.S. at 293). "The sovereignty of each State…implie[s] a limitation on the sovereignty of all its sister States." *Id.* And when the state court has little to no legitimate interest in resolving the claims in question, "the Due Process Clause, acting as an instrument of interstate federalism, may…act to divest the State of its power to render a valid judgment." *Id.* at 1781 (quoting *World–Wide Volkswagen*, 444 U.S. at 294).

This Court explicitly "le[ft] open the question whether the Fifth Amendment imposes the same

restrictions on the exercise of personal jurisdiction by a federal court." *Id.* at 1784.

II. PROCEEDINGS BELOW.

Petitioner Laura Canaday filed this action under the FLSA seeking unpaid overtime from Respondent The Anthem Companies, Inc. in the United States District Court for the Western District of Tennessee. *Canaday v. Anthem Cos., Inc.*, No. 1:19-cv-01084, ECF No. 1 (W.D. Tenn.).[1] Canaday filed the case in Tennessee because she worked for Anthem in Tennessee. *Id.* at 3. Canaday served the court's summons, along with a copy of her complaint, on Anthem's registered agent in Tennessee. *Canaday*, ECF No. 7.

Canaday's theory of liability is common in FLSA litigation. She alleges that Anthem uniformly misclassified employees in her position—called utilization review nurses—as exempt from the FLSA's overtime rule. *Canaday*, ECF No. 1 at 4. The challenged employment practice extends far beyond the borders of any one state. *Id.* at 1. Anthem is the second largest health-insurance company in the United States. *Id.* at 2. It employs workers in Canaday's position in many states across the country. *Id.* And Anthem's employment practice is uniform across all employees in the same position. *Id.* Given the broadscale nature of the violation alleged, Canaday brought her suit "on behalf of

[1] The district court exercised federal-question jurisdiction under 28 U.S.C. § 1331.

herself and other similarly situated" utilization review nurses. *Id.* at 1.

After Canaday filed her complaint, dozens of similarly situated employees began opting into the suit by filing consent forms with the district court. *Canaday*, ECF Nos. 1-2, 11-1, 15-1, 16-1, 20-1, 22-1, 26-1, 27-1, 28-1, 29-1, 31-1, 32-1, 33-1, 34-1, 35-1, 37-1, 40-1, 41-1, 42-1, 43-1, 48-1, 51-1, 56-1, 58-1, 63-1, 76-1, 77-1, 79-1. Some of these employees worked for Anthem in states other than Tennessee. *Canaday*, ECF No. 36-6 at 2, 8, 14. Anthem is incorporated and headquartered in Indiana. *Canaday*, ECF No. 17 at 4. But Anthem also operates—and employs similarly situated employees—through 171 subsidiaries incorporated and headquartered in many other states. *Canaday*, ECF No. 53-2 at 2–3.

Canaday filed a motion seeking conditional certification and court-authorized notice. *Canaday*, ECF No. 36.[2] Canaday asked the court to certify a nationwide FLSA collective action covering all utilization review nurses who worked for Anthem. *Canaday*, ECF No. 36-1 at 4.

Anthem argued in response that any collective action should be limited to employees who worked

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[2] Where, as here, the named plaintiff makes a colorable showing that the challenged policy affects similarly situated workers, district courts typically "conditionally certify" the case and direct "notice concerning the pendency of the collective action, so that [similarly situated employees] can make informed decisions about whether to participate." *Hoffmann-La Roche*, 493 U.S. at 170; *Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546 (6th Cir. 2006).

for Anthem in Tennessee because, in Anthem's view, the district court lacked personal jurisdiction over Anthem with respect to potential opt-in plaintiffs who worked in other states. *Canaday*, ECF No. 53 at 9–10. Based on the same rationale, Anthem also filed a motion to dismiss the claims of three opt-in plaintiffs who had already joined the suit. *Canaday*, ECF No. 52 at 4–11. These three employees worked for Anthem outside Tennessee. *Id.* at 1.

The district court granted Anthem's motion to dismiss and granted Canaday's motion for conditional certification only in part. App. 69a. The court agreed that Canaday had shown that "she is similarly situated to the other Anthem employees she seeks to represent." App. 67a. But citing *Bristol-Myers*, the district court held that it lacked personal jurisdiction over Anthem with respect to the claims of current or putative opt-in plaintiffs who worked for Anthem outside Tennessee. App. 62a–66a. Consequently—and based solely on this justification—the court limited the certified collective action and court-approved notice to employees who worked for Anthem in Tennessee and dismissed the pending claims of the three opt-in plaintiffs who worked elsewhere. App. 66a.

Reviewing the district court's decision under 28 U.S.C. § 1292(b), a divided Sixth Circuit panel affirmed. App. 1a.

REASONS FOR GRANTING THE PETITION

Given the clear split of authority on an important and recurring question of federal law, this Court should grant certiorari.

I. THE CIRCUITS ARE DIVIDED OVER *BRISTOL-MYERS*' APPLICATION TO FLSA COLLECTIVE ACTIONS.

The circuit courts are divided on the question presented.

In the employers' corner, the Eighth Circuit held that *Bristol-Myers* applies to FLSA collective actions. *Vallone*, 9 F.4th at 865. The Eighth Circuit began with the precept that "[p]ersonal jurisdiction must be determined on a claim-by-claim basis"—including, apparently, the claims of any opt-in plaintiffs. *Id.* From there, the Eighth Circuit reasoned that "jurisdiction to entertain a claim with connections to [the forum state does not] establish[] jurisdiction to hear another claim with no such connection." *Id.* at 866.

The Sixth Circuit, in its opinion below, divided sharply on the question presented. The majority held that "[t]he principles animating *Bristol-Myers*'s application to mass actions under California law apply with equal force to FLSA collective actions under federal law." *Canaday*, 9 F.4th at 397; App. 10a. The majority based that holding on its conclusion that "[i]n an FLSA collective action, as in the mass action under California law, each opt-in plaintiff becomes a real party in interest, who must meet her burden for obtaining relief and satisfy the

other requirements of party status"—including separately establishing personal jurisdiction. *Id.*; App. 10a.

In her dissent in this case, Judge Donald identified several flaws in the majority's reasoning. "An FLSA collective action," she observed, is "a single lawsuit." *Id.* at 408 (Donald, J., dissenting); App. 36a. And "[t]he singularity of the lawsuit does not change simply because new plaintiffs with the same or similar claims as to the named plaintiff might join the collective at a later time." *Id.*; App. 36a. *Bristol-Myers*, she recognized, reaffirmed that "*the suit* must arise out of or relate to the defendant's contacts with the forum." *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1780); App. 36a. And "in this case, the only lawsuit is between Canaday and Anthem, and the specific jurisdiction analysis must be conducted at the level of Canaday's claims." *Id.* at 408–09; App. 37a.

Judge Donald also faulted the majority's conclusion that Rule 4 imports *Bristol-Myers*' holding into FLSA collective actions maintained in federal court. "Rule 4 contains only one operative command: '[a] summons must be served with a copy of the complaint.'" *Id.* at 409 (quoting Fed. R. Civ. P. 4(c)(1)); App. 38a. And "Rule 4(b) ties that command to '*the* plaintiff' who has filed a complaint." *Id.* (quoting Fed. R. Civ. P 4(b)); App. 38a. "Thus," she concluded, "the only logical reading of Rule 4 is that service is deemed effective based only on whether the *original named plaintiff*'—and not the opt-in

plaintiffs—complies with Rule 4. *Id.* at 408–09; App. 38a.

Judge Donald distinguished *Bristol-Myers* in other ways as well. The result in *Bristol-Myers*, she noted, was driven by "principles of interstate federalism." *Id.* at 410–11; App. 48a. "But the 'territorial limitations on the power of the respective States' are not present in this case." *Id.* at 411; App. 42a. And unlike mass actions like the one in *Bristol-Myers*, "an FLSA collective action is not a consolidated series of separate lawsuits; rather, it is a single representative action, which proceeds on the basis that one (or more) named plaintiff(s) represents the claims of the entire collective." *Id.* at 412; App. 44a. "These critical differences," she concluded, mean "that *Bristol-Myers* does not prevent the district court's assertion of personal jurisdiction" in collective actions like this one. *Id.* at 412; App. 45a.

Most recently, the First Circuit agreed that *Bristol-Myers* does not constrain federal courts' authority to maintain FLSA collective actions. *Waters*, 2022 WL 123233, at *7.[3] The First Circuit acknowledged the circuit split up front, explaining

[3] Judge Barron dissented on procedural grounds. *Waters*, 2022 WL 123233, at *12 (Barron, J., dissenting). He would have dismissed the interlocutory appeal as improvidently granted in view of the contingent nature of the district court's ruling. *Id.* at *17. That conclusion bears no relevance to the circuit split. As explained below, though, the procedural issues identified in Judge Barron's dissent reveal significant vehicle problems in *Waters*.

that "the Sixth and Eighth Circuits, faced with [*Bristol-Myers*]-based personal jurisdiction challenges to FLSA collective actions, disagree with the decision that we reach today." *Id.* at *10 (majority opinion).[4]

Building on Judge Donald's dissent, the First Circuit held that the Sixth and Eighth Circuits misread Rule 4: "[Rule 4] nowhere suggests that…[it] constrains a federal court's power to act once a summons has been properly served, and personal jurisdiction has been established." *Id.* at *7. And holding otherwise in the context of FLSA collective actions would frustrate Congress' intent to "enable all affected employees working for a single employer to bring suit in a single, collective action." *Id.* at *9.

The split in the circuit court opinions mirrors the massive division among district courts. According to Petitioners' count, 23 federal district courts have held that *Bristol-Myers* does not apply to FLSA collective actions. App. 114a. Twenty-four district courts have held just the opposite. *Id.* Citations to these decisions are included in the appendix to this petition. *Id.* It is hard to fathom a more robust—and intractable—split of authority.

Certiorari is manifestly warranted to resolve this disagreement.

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[4] No petition for rehearing was filed in the First Circuit in *Waters*. The deadline to do so has now passed.

II. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING.

The question presented is also important and recurring, further supporting this Court's review.

"[C]hallenges [to] the constitutionality of [an] act of congress, it is manifest, are of very grave importance." *Liverpool*, 113 U.S. at 36. Although the novel due-process limitations proposed by employers in the wake of *Bristol-Myers* would not strike down the FLSA entirely, they would—and do—severely impair Congress' goal of encouraging "efficient resolution in one proceeding." *See Hoffmann-La Roche*, 493 U.S. at 170. "Actions that combined hundreds of claims based on similar violations of the FLSA [would] be splintered into dozens, if not hundreds, of lawsuits all over the country." *Canaday*, 9 F.4th at 416 (Donald, J., dissenting); App. 53a. That would "undoubtedly result in piecemeal litigation, potentially divergent outcomes for similarly situated plaintiffs, and major

inefficiencies for the federal courts." *Id.*; App. 53a.[5] Resolution of the question presented is important to employees, employers, and courts alike.

And the FLSA is no ordinary federal statute. Congress enacted the FLSA in the midst of the Great Depression with the goal of "protect[ing] all covered workers from substandard wages and oppressive working hours." *Barrentine v. Arkansas–Best Freight Sys., Inc.*, 450 U.S. 728, 739 (1981). The FLSA is a foundational piece of legislation applicable to millions of employees and businesses. Any attack on its lawful application should be taken up by this Court immediately.

Collective actions are also quite common. Litigants file thousands of FLSA cases every year.[6]

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[5] Employers insist that employees remain free to sue employers in a single collective action in the employer's home state. In practice, it rarely works that way. Employers, including Anthem, frequently balkanize their operations through a web of corporate affiliates, subsidiaries, and subcontractors. *See* David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* 7, 76 (2014); Richard B. Freeman, *The Subcontracted Labor Market*, 18 Labor and Employment Relations Association: Perspectives on Work 38, 38 (2014). In such cases, unless *all* of the defendants are "essentially at home"—and thus subject to general jurisdiction—in the same forum, *Goodyear*, 564 U.S. at 918, employees aggrieved by a common unlawful practice cannot proceed in a single collective action *anywhere*.

[6] *See* U.S. Courts, Statistics & Reports, available at https://www.uscourts.gov/sites/default/files/data_tables/jb_c2_0930.2021.pdf (5,563 new FLSA cases were filed in federal court last year alone).

And other federal labor statutes, including the Age Discrimination in Employment Act and the Equal Pay Act, expressly incorporate the FLSA's collective-action mechanism. 29 U.S.C. § 626(b); 29 U.S.C. § 206(d); 29 U.S.C. § 216(b).

The importance of the question presented, though, extends far beyond wage-and-hour and anti-discrimination law. It affects "a whole range of cases…that have nothing to do with…collective actions." *Waters*, 2022 WL 123233, at *16 (Barron, J., dissenting).

Anthem and its amici propose a categorical personal-jurisdiction rule, where "[a]ll claimants," including parties represented in class and collective litigation, "must show the court has personal jurisdiction over the defendant as to [each of] their claims" throughout the life of the lawsuit. Appellee's Brief at 13, *Canaday*, 9 F.4th 392. "This rule," Anthem maintains, "has no exceptions." *Id.*

That rule, if accepted, would seriously disrupt aggregate litigation in federal court. Consider the MDL. "Transfers under Section 1407 are…not encumbered by considerations of in personam jurisdiction." *See Howard v. Sulzer Orthopedics, Inc.*, 382 F. App'x 436, 442 (6th Cir. 2010) (quoting *In re FMC Corp. Patent Litig.*, 422 F. Supp. 1163, 1165 (J.P.M.L. 1976)). Although the MDL statute, like the FLSA, does not authorize nationwide service of process, 28 U.S.C. § 1407, courts nevertheless read it to "authoriz[e] the federal courts to exercise nationwide personal jurisdiction." *Howard*, 382 F.

App'x at 442 (quoting *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 163 (2d Cir. 1987)); *In re Delta Dental Antitrust Litig.*, 509 F. Supp. 3d at 1380 ("We are not persuaded that *Bristol-Myers* necessitates unraveling more than forty years of MDL jurisprudence."). This settled understanding is essential to MDL litigation—which accounts for more than fifty percent of the federal civil caseload.[7] Without it, most MDL cases couldn't be centralized in a single court *anywhere*. The same is true for other types of representative litigation. In Rule 23 class actions, "courts have routinely exercised personal jurisdiction over out-of-state defendants in nationwide class actions, and the personal-jurisdiction analysis has focused on the defendant, the forum, and the *named plaintiff*, who is the putative class representative." *Lyngaas*, 992 F.3d at 433. Other types of representative suits work the same way. In cases involving administrators, trustees, and guardians, for example, courts engage in the jurisdictional analysis by reference to the fiduciaries rather than the beneficiaries. *E.g.*, *Childress v. Emory*, 21 U.S. (8 Wheat.) 642, 668–69 (1823) (administrators); *Coal Co. v. Blatchford*, 78 U.S. (11 Wall.) 172, 172 (1870) (trustees); *Mexican*

[7] *See* U.S. Courts, Statistics & Reports, available at https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2018.pdf; https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Calendar_Year_Statistics-2018.pdf; https://www.jpml.uscourts.gov/statistics-info.

Cent. Ry. v. Eckman, 187 U.S. 429, 429 (1903) (general guardians).

Make no mistake: employers' maximalist reading of *Bristol-Myers* casts a shadow over all of this. Granting certiorari—and correctly resolving the question presented here—would go a long way toward reaffirming the traditional jurisdictional rules widely applicable to group and representative litigation in federal court.

The question presented is also important because it speaks directly to the authority of federal courts to exercise jurisdiction. "Personal jurisdiction…is 'an essential element of the jurisdiction of a district...court,' without which the court is 'powerless to proceed to an adjudication.'" *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (quoting *Emp'rs Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937)). There's good reason this Court has accepted seven personal-jurisdiction cases over the past decade. *See Nicastro*, 564 U.S. 873; *Goodyear*, 564 U.S. 915; *Daimler*, 571 U.S. 117; *Walden*, 571 U.S. 277; *BNSF*, 137 S. Ct. 1549; *Bristol-Myers*, 137 S. Ct. 1773; *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). Deciding cases like these is essential to "proceed[ing] with a clear understanding of the jurisdictional landscape." *In re: Laura Canaday*, No. 20-504, ECF No. 6-2 at 2 (6th Cir.).

III. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH SUPREME COURT PRECEDENT.

The Sixth Circuit majority's interpretation stands at odds with the legal sources it claimed to interpret and this Court's precedent. This, too, favors Supreme Court review.

No statute, constitutional provision, or rule suggests—let alone requires—the limitation on FLSA collective actions proposed by employers. On the contrary, a careful examination of these sources strongly reinforces the opposite conclusion: when, as here, a *uniform employment practice* is challenged in *federal court* under a *federal statute* that *explicitly contemplates representative actions covering similarly situated employees*, the claims can—and should—proceed in a single, unified proceeding.

The FLSA does not compel employers' preferred result. Every shred of available evidence—including, most obviously, the text of the Act—points toward Congress' unyielding desire to unify collective actions in a single proceeding. 29 U.S.C. § 216(b); *Hoffmann-La Roche*, 493 U.S. at 170.

Nor does the Constitution impose any such limitation. In federal court, personal jurisdiction is governed by the Fifth—not the Fourteenth—Amendment Due Process Clause. *Carrier*, 673 F.3d at 449. And under the Fifth Amendment, "personal jurisdiction exists whenever the defendant has 'sufficient minimum contacts with the *United States*'" as a whole. *Id.* (quoting *Med. Mut. of Ohio*, 245 F.3d at 566–67). This analysis stands in contrast

to the Fourteenth Amendment due-process inquiry, which is animated by federalism interests and the attendant "territorial limitations on the power of the respective States." *Bristol-Myers*, 137 S. Ct. at 1780 (citing *Hanson*, 357 U.S. at 251). Maintaining a single FLSA collective action in federal court implicates no such federalism concerns.

The Federal Rules of Civil Procedure likewise do not support employers' claimed limitation. Nothing in Rule 4 remotely suggests that opt-in plaintiffs—as opposed to *named plaintiffs*—in an FLSA collective action need to separately satisfy service-of-process requirements. Rule 4's operative provision states that "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 4(c). Rule 4(k)(1)(A) further provides that "serving a summons…establishes personal jurisdiction over a defendant who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." *Id.* Together, these two provisions reflect a requirement that the *named plaintiff or plaintiffs* effectuate service of process and comply with state-law personal-jurisdiction rules. Rule 4 in no way suggests that every opt-in plaintiff who consents to join a collective action must separately and repetitiously meet these requirements. "In an FLSA collective action…there has never been a requirement that each individual opt-in plaintiff…achieve individual service of process upon the defendant." *Hammond v. Floor & Decor Outlets of Am., Inc.*, No. 3:19-cv-01099, 2020 WL 2473717, at *15 (M.D. Tenn. May 13, 2020).

The lack of any independent service-of-process requirement for opt-in plaintiffs is no accident. It aligns with the settled historical understanding that opt-in plaintiffs in representative litigation are not required to independently satisfy the prerequisites of federal jurisdiction. Under the text of the FLSA, the named plaintiff takes on a special fiduciary role: acting on "behalf of himself…and other employees similarly situated." *See* 29 U.S.C. § 216(b). Similarly situated employees who opt into the action play a more passive and limited role. *Monroe*, 860 F.3d at 408. Although mostly forgotten now, these sorts of opt-in representative actions were once a common feature across the legal landscape. Between 1938 and 1966, the Federal Rules explicitly contemplated opt-in representative actions under Rule 23. Before that, the Equity Rules did the same. And the historical record is clear: opt-in plaintiffs in such actions were not counted for purposes of establishing jurisdiction. *See* Moore's Federal Practice § 23.04, pp. 2241–42. The same holds true in FLSA collective actions.

These same considerations further demonstrate the lack of parallels between the state-court, state-law action in *Bristol-Myers* and FLSA collective actions. Collective actions, like their modern-day Rule 23 class-action cousins, are single lawsuits brought by named representatives. Mass-tort cases, like the one proposed in *Bristol-Myers*, are an amalgamation of individual suits, each one of which requires service of process. This difference is significant because the personal-jurisdiction

analysis occurs "at the level of the suit." *Morgan v. U.S. Xpress, Inc.*, No. 3:17-CV-00085, 2018 WL 3580775, at *5 (W.D. Va. July 25, 2018). As this Court explained in *Bristol-Myers*, "*the suit*" must "aris[e] out of or relat[e] to the defendant's contacts with the forum." *Bristol-Myers*, 137 S. Ct. at 1780 (emphasis added). "The suit," in this case, is the FLSA collective action. And such suits arise out of and relate to a defendant's contacts with the forum when the named representatives' claims have the requisite connection to that forum.

There are other reasons yet to reject employers' proposed constitutional limitation. FLSA collective actions are a creature of federal law—and a law that explicitly provides for collective, representative actions. None of the federalism concerns that animated *Bristol-Myers* applies to such federal-law actions. *Bristol-Myers* is best understood as prohibiting state courts from deciding state-law claims that have nothing to do with the forum state—a practice that, if accepted, would usurp the sovereign authority of other states to apply their own law. But there is every reason to conclude that both state and federal courts could maintain an FLSA collective action that includes some out-of-state opt-in plaintiffs without "offend[ing] traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316. A state has no particular sovereign interest vis-à-vis its sister states in adjudicating federal wage-and-hour claims. And states have *no sovereign interest at all* that could possibly justify frustrating Congress' strong

desire to unify FLSA collective actions in a single proceeding. The federalism concerns that proved "decisive" in *Bristol-Myers*, 137 S. Ct. at 1780, are entirely absent here.

IV. THIS CASE PRESENTS THE IDEAL VEHICLE TO ADDRESS THE QUESTION PRESENTED.

This case presents the ideal vehicle to address the question presented.

The district court addressed the jurisdictional question in the context of Canaday's motion seeking conditional certification and court-authorized notice. *Canaday*, ECF No. 36. And aside from the jurisdictional limitation that the district court placed on the scope of the collective action, Canaday's motion was granted: the court agreed that Canaday had met her burden to show that "she is similarly situated to the other Anthem employees she seeks to represent." App. 67a. The district court's jurisdictional holding thus operated as the but-for reason—indeed, the *only* reason—that the court limited the collective action to employees who worked in Tennessee. *Id.*

These same considerations make the First Circuit's decision in *Waters* a comparatively poor vehicle. In *Waters*, the "motion to dismiss [certain opt-in plaintiffs] was made before the named plaintiff…ha[d] even moved to certify the putative class of 'similarly situated' employees on whose behalf he seeks to sue in bringing [his] claim." *Waters*, 2022 WL 123233, at *16 (Barron, J., dissenting). That procedural posture made the

district court's decision in *Waters* somewhat contingent. It remained to be seen whether the named plaintiff would move for conditional certification; and, if so, whether the court would find him similarly situated to the class of workers he claimed to represent. *Id.*[8] Indeed, unless the named plaintiff brings a motion to certify a collective action and the district court finds him similarly situated to his out-of-state coworkers, deciding the jurisdictional status of the opt-in plaintiffs in *Waters* would be akin to issuing an advisory opinion. Resolving that question in *Waters* thus stands in some tension with the premise that federal courts should refrain from giving opinions on "moot questions or abstract propositions." *United States v. Alaska S.S. Co.*, 253 U.S. 113, 116 (1920).

This case, by contrast, presents no barriers to addressing the jurisdictional question.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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[8] When a court denies a motion to certify a collective action, it typically dismisses the claims of any pre-certification opt-in plaintiffs without prejudice. *See, e.g.*, *McGlathery v. Lincare, Inc.*, No. 8:13-cv-1255-T-23TBM, 2014 WL 1338610, at *2–3 (M.D. Fla. Apr. 3, 2014); *Clay v. Huntington Ingalls, Inc.*, No. 09-7625, 2012 WL 860375, at *3 (E.D. La. Mar. 13, 2012); *Odem v. Centex Homes*, No. 3:08-CV-1196-L, 2010 WL 424216, at *2 (N.D. Tex. Feb. 4, 2010); *Lee v. ABC Carpet & Home*, 236 F.R.D. 193, 197 (S.D.N.Y. 2006); *England v. New Century Fin. Corp.*, 370 F. Supp. 2d 504, 511–12 (M.D. La. Apr. 26, 2005).

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