No. 21-1098

IN THE
Supreme Court of the United States

LAURA CANADAY, individually and on behalf of all others similarly situated,

Petitioner,

v.

THE ANTHEM COMPANIES, INC.,

Respondent.

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

BRIEF IN OPPOSITION

JAMES M. HARRIS
SEYFARTH SHAW LLP
2029 Century Park E
Suite 3500
Los Angeles, CA 90067

BRETT C. BARTLETT
Counsel of Record
KEVIN M. YOUNG
LENNON B. HAAS
SEYFARTH SHAW LLP
1075 Peachtree Street NE
Suite 2500
Atlanta, GA 30309
(404) 885-1500
bbartlett@seyfarth.com

Counsel for Respondent

QUESTION PRESENTED

Whether a district court can exercise specific personal jurisdiction over Fair Labor Standards Act claims asserted by nonresident plaintiffs with no connection to the forum State other than a factual similarity to claims asserted by resident plaintiffs in the same action.

RULE 29.6 DISCLOSURE STATEMENT

Respondent The Anthem Companies, Inc. is a wholly owned subsidiary of ATH Holding Company, LLC, which is a wholly owned subsidiary of Anthem, Inc., a publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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INTRODUCTION

Petitioner Laura Canaday asks the Court to review the Sixth Circuit's conclusion that *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 137 S. Ct. 1773 (2017), precludes the exercise of specific personal jurisdiction over claims asserted in a Fair Labor Standards Act (FLSA) collective action filed by opt-in plaintiffs with no connection to the forum State. There is, however, no disagreement among the courts of appeals on that question. The only two appellate courts to pass on the issue—the Sixth and Eighth Circuits—hold that *Bristol-Myers Squibb* applies to FLSA opt-in plaintiffs' claims.

The First Circuit disagrees with the Sixth and Eighth Circuits on a different, predicate question: whether the Fourteenth Amendment personal-jurisdiction constraints embedded in Federal Rule of Civil Procedure 4(k)(1)(A) apply to opt-in FLSA plaintiffs who join a suit after the defendant is initially served. The Sixth and Eighth Circuits hold that Rule 4(k)(1)(A) applies to these plaintiffs; the First Circuit disagrees. But the First Circuit did not reach the *Bristol-Myers Squibb* question that is the centerpiece of Canaday's petition. In fact, the First Circuit has held that opt-in plaintiffs in FLSA actions are real parties in interest, suggesting that if it *did* reach the *Bristol-Myers Squibb* issue, it would agree with its sister circuits. And although the district courts may be divided on the *Bristol-Myers Squibb* question, that counsels in favor of further percolation, not immediate review.

The lack of any split on the *Bristol-Myers Squibb* question presented by Canaday's petition is not the only reason to deny review. Canaday contends that the decision below makes it too difficult for all similarly situated employees to band together in a single FLSA collective action, but employees presumably could sue their employer where it is subject to general jurisdiction. Canaday argues that the decision below will ripple out and cause all sorts of mayhem to everything from multidistrict litigation to fiduciary suits, but those cases involve different statutes, rules, and procedures. And should Canaday's far-fetched fears ever be realized, Congress or the Advisory Committee on Civil Rules can allay them.

With neither a split nor an important question for this Court to address, Canaday resorts to arguing the

merits. But the Sixth Circuit correctly explained that opt-in plaintiffs in FLSA actions are no different than later-added plaintiffs in any other civil action, and that personal-jurisdiction limitations have always been understood to apply to the claims of plaintiffs added after service of a suit's summons. Canaday identifies no error in the Sixth Circuit's opinion for the Court to correct. Her arguments instead reduce down to the point that all claims relating to Anthem's allegedly unlawful conduct should be heard in one lawsuit. But, as this Court has held time and again, plaintiffs' convenience cannot outweigh a defendant's due-process rights.

The petition should be denied.

STATEMENT

A. The Fair Labor Standards Act

The FLSA requires employers to pay certain non-exempt employees time-and-a-half for overtime, and allows those employees to sue to recover the unpaid overtime. 29 U.S.C. §§ 207(a)(1), 216(b). An employee can also bring what is known as a collective action, which allows the employee to sue on "behalf of * * * other employees similarly situated." *Id.* § 216(b). A "similarly situated" employee can opt into the collective action by "giv[ing] his consent in writing to become" a "party plaintiff" and filing the consent with the court. *Id.* "Once they file a written consent, opt-in plaintiffs enjoy party status as if they had initiated the action." Pet. App. 3a.

B. Personal Jurisdiction and *Bristol-Myers Squibb*

1. "Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Walden* v. *Fiore*, 571 U.S. 277, 283 (2014) (quoting *Daimler AG* v. *Bauman*, 571 U.S. 117, 125 (2014)). Federal courts do so "because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.' " *Id.* (quoting Fed. R. Civ. P. 4(k)(1)(A)). And because "[t]he Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant," *Ford Motor Co.* v. *Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021), the Fourteenth Amendment likewise limits a federal court's exercise of personal jurisdiction in cases governed by Federal Rule of Civil Procedure 4(k)(1)(A), *Walden*, 571 U.S. at 283.

Personal jurisdiction under the Fourteenth Amendment "focuse[s] on the nature and extent of 'the defendant's relationship to the forum State.' " *Ford*, 141 S. Ct. at 1024 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1779). A defendant's varying relationship with a forum has given rise to "two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Id.* General jurisdiction exists "when a defendant is 'essentially at home' in the State"; a court with general jurisdiction over a defendant can hear " 'any and all claims' brought against [that] defendant." *Id.* (citations omitted). "Specific jurisdiction is

different: It covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Id.* A court with specific jurisdiction over a defendant can only hear "claims" that "arise out of or relate to the defendant's contact's with the forum." *Id.* at 1025 (quotation marks omitted).

2. In *Bristol-Myers Squibb*, this Court applied these "settled principles" to a "mass action" under California law filed in California state court against Bristol-Myers Squibb for alleged defects in one of its drugs. 137 S. Ct. at 1777-78, 1780-81; *id.* at 1787 (Sotomayor, J., dissenting) (characterizing the action as a "mass action[ ]"). The action involved more than 600 plaintiffs, only 86 of whom lived in California. *Id.* at 1778. California lacked general jurisdiction over Bristol-Myers Squibb. And the nonresident plaintiffs' claims lacked any relationship with California: The nonresidents did not purchase the product there; they were not injured there; and they were not treated for their injuries there. *Id.* The California Supreme Court nonetheless held that the state trial court could exercise specific jurisdiction under the Fourteenth Amendment over the nonresidents' claims because those claims "were similar in several ways to the claims of the California residents." *Id.* at 1779.

This Court reversed. A court's personal jurisdiction, this Court explained, is claim-specific. "What is needed * * * is a connection between the forum and the specific claims at issue." *Id.* at 1781. "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* That was the case for the nonresident plaintiffs' claims: They were not California residents, they were not harmed in the State, and

"all the conduct giving rise to the nonresidents' claims occurred elsewhere." *Id.* at 1782. The factual similarity between their claims and the residents' claims was not enough; "a defendant's relationship with a * * * third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 1781 (quoting *Walden*, 571 U.S. at 286). "This remains true even when third parties * * * can bring claims similar to those brought by the nonresidents." *Id.* Absent a connection between the nonresident plaintiffs' claims and California, the California courts could not exercise specific jurisdiction over those claims. *Id.* at 1782.

C. Procedural History

1. Anthem, Inc. is a health-benefits company and the corporate parent of dozens of subsidiaries. *See* Declaration of Sherry Cole, Dist. Ct. Dkt. No. 53-2 at 1. Some of those subsidiaries are regulated insurance companies operating throughout the United States. *Id.* Another subsidiary is respondent The Anthem Companies, Inc. ("Anthem"), which provides back-end administrative support, including payroll and human resources, to Anthem, Inc.'s health-insurance subsidiaries. *See id.* Anthem is incorporated and headquartered in Indiana. *See* Compl., Dist. Ct. Dkt. No. 1 at 2.

Anthem employs medical-necessity review nurses, which, as their name suggests, are registered nurses who review medical procedures or services to determine whether they are medically necessary. Pet. App. at 4a. Anthem pays many of these nurses a salary and classifies them as exempt from overtime. *Id.* During the relevant time period, Anthem employed about 2,500 review nurses across the country, with fewer than 100 in Tennessee. *Id.* at 56a. Petitioner Laura

Canaday, who lives and works in Tennessee, is one such nurse.

2. In 2019, Canaday filed a FLSA collective action against Anthem in Tennessee federal court, "alleging that the company misclassified her and other review nurses as exempt from the federal overtime rules." Pet. App. 4a. In the weeks that followed, "[d]ozens of nurses opted into the action by filing written consent forms with the federal court." *Id.* Several opt-in plaintiffs did not live or work in Tennessee. *Id.*

Canaday moved to conditionally "certify a collective action of all utilization review nurses that Anthem classified as exempt from overtime." *Id.* Conditional certification allows the court "to determine * * * the group of employees that may be represented in the action so as to authorize a notice to possible collective members who may want to participate." 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure: Civil § 1807 (3d ed. 2021 update).

Anthem responded that certification should be limited to its Tennessee employees because the court lacked personal jurisdiction over the out-of-state opt-in plaintiffs' claims. Anthem moved to dismiss all pre-certification out-of-state opt-in plaintiffs under Federal Rule of Civil Procedure 12(b)(2) for the same reason. Pet. App. 4a. Anthem explained that the Tennessee federal court lacked general jurisdiction over it because Anthem is not incorporated or headquartered in Tennessee. *See id.* at 62a n.3. And under *Bristol-Myers Squibb*, the court lacked specific jurisdiction because the nonresident plaintiffs' FLSA claims did not have the requisite connection to Tennessee. *Id.* at

62a. The district court agreed and "dismissed the nonresident plaintiffs without prejudice, leaving a collective action of Tennessee-based nurses." *Id.* at 4a-5a.

3. The district court certified its order under 28 U.S.C. § 1292(b). The Sixth Circuit granted leave to appeal, and subsequently affirmed in an opinion authored by Chief Judge Sutton and joined by Judge McKeague. Pet. App. 1a-25a.

a. The Sixth Circuit explained that because the FLSA does not "include a nationwide service of process provision," a federal district court can exercise personal jurisdiction over a FLSA defendant only when consistent with Federal Rule of Civil Procedure 4(k)(1)(A). *Id.* at 6a-7a. Rule 4(k)(1)(A) provides that "[s]erving a summons or filing a waiver of service 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." Fed. R. Civ. P. 4(k)(1)(A).

The Tennessee long-arm statute authorizes personal jurisdiction to the full extent allowed by the Fourteenth Amendment's Due Process Clause. Pet. App. 7a. The Sixth Circuit therefore explained that, under *Bristol-Myers Squibb*, the question in this case is whether there is "a claim-specific and Anthem-specific relationship between the out-of-state claims and Tennessee." *Id.* at 8a. The Sixth Circuit held that there was not: Anthem did not employ or pay the nonresident plaintiffs in Tennessee. *Id.* at 10a. The court explained that "[w]here, as here, nonresident plaintiffs opt into a putative collective action under the FLSA, a court may not exercise specific personal jurisdiction over claims unrelated to the defendant's conduct in the forum State." *Id.*

Bristol-Myers Squibb controlled this case because "[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." *Id.* "The key link," the Sixth Circuit stated, "is party status." *Id.* "In 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." *Id.* And "the claims" here "look just like the claims in *Bristol-Myers*." *Id.*

The court then rejected Canaday's various arguments as to why the district court could nonetheless exercise personal jurisdiction over the nonresident opt-in plaintiffs' claims. The Fourteenth Amendment—not the Fifth Amendment—applied by virtue of Rule 4(k)(1)(A), which "places territorial limits on a defendant's amenability to effective service of a summons by a federal district court, tying personal jurisdiction over a defendant to the host State's jurisdiction over it." Pet. App. 13a. Those territorial limitations do not apply only to the original plaintiff; Rule 4(k)(1)(A) requires "that the defendant be amenable to the territorial reach of that district court" for each and every claim of each and every plaintiff. *Id.* at 16a. And under this Court's longstanding precedent, personal jurisdiction is analyzed "at the level of each claim," not "at the level of the suit." *Id.* at 17a. Any "inefficiencies created by this approach" are an acceptable byproduct of "limitations [that] are designed principally to protect defendants, not to facilitate plaintiffs' claims." *Id.*

The Sixth Circuit also observed that although it had recently held that the personal-jurisdiction analysis in class actions considers only the named plaintiff, salient differences between FLSA collective actions and class actions meant that the two "require different approaches to personal jurisdiction." *Id.* at 21a. The panel also made clear that its decision "by no means resolves the application of *Bristol-Myers* to multidistrict litigation." *Id.* at 24a-25a.

b. Judge Donald dissented. In her view, personal jurisdiction should be considered "at the level of the suit." *Id.* at 36a (emphasis omitted). And because "[a]n FLSA collective action is designed to be a single lawsuit throughout the entire litigation process," "the only lawsuit is between Canaday and Anthem." *Id.* at 36a-37a. Whether a court has jurisdiction over the nonresident opt-in plaintiffs accordingly does not matter. *Id.* at 37a. Judge Donald also disagreed that *Bristol-Myers Squibb* required a different outcome. *Id.* at 40a-45a. *Bristol-Myers Squibb* was a case about "interstate federalism," Judge Donald posited, *id.* at 41a—a concept not at issue in FLSA cases, which "arise[ ] entirely under federal law," *id.* at 42a. And Judge Donald believed that, unlike the mass action in *Bristol-Myers Squibb*—where "each individual plaintiff * * * was a real party in interest and each individual lawsuit retained a separate identity"—"an FLSA collective action * * * 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 44a.

Canaday's petition followed.

REASONS FOR DENYING THE PETITION

I. THE CIRCUITS ARE NOT SPLIT ON WHETHER *BRISTOL-MYERS SQUIBB* APPLIES TO FLSA COLLECTIVE ACTIONS.

Canaday claims that "the circuits are divided over *Bristol-Myers'* application to FLSA collective actions." Pet. 21 (capitalization altered). The way Canaday sees it, the Sixth and the Eighth Circuits have "held that *Bristol-Myers* applies to collective actions," *id.*, while the First Circuit has held that it does not, *id.* at 23-24.

That is not quite right. The disagreement between these courts is not over *Bristol-Myers Squibb*. And although *district courts* may be divided over *Bristol-Myers Squibb*'s applicability to collective actions, this Court generally allows district court splits to percolate through the courts of appeals before weighing in.

1. The Sixth Circuit held that FLSA opt-in plaintiffs are "real part[ies] in interest" to a FLSA collective action. Pet. App. 10a. The claims of opt-in plaintiffs must accordingly satisfy "Civil Rule 4(k)(1)(A)'s territorial limitations" on personal jurisdiction, *id.* at 16a, which incorporate the Fourteenth Amendment and require "a connection between the forum and the specific claims," *id.* at 8a (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781). The opt-in plaintiffs' claims must satisfy Rule 4(k)(1)(A), the Sixth Circuit held, even if the district court has personal jurisdiction over the original plaintiff's claims. *Id.* at 15a-16a. And because there was no connection between the nonresident opt-

in plaintiffs' claims and Tennessee, the court of appeals affirmed the district court's dismissal. *Id.* at 10a.

The Eighth Circuit took the same approach in *Vallone* v. *CJS Solutions Group, LLC*, 9 F.4th 861 (8th Cir. 2021). *Vallone* involved a FLSA collective action alleging that an employer failed to pay wages for time employees spent travelling to work events in various States. *Id.* at 863-864. The Eighth Circuit held that the collective action was properly limited to employees whose claims had a connection to the forum. *Id.* at 865-866. The court explained that because the FLSA "does not provide for nationwide service of process," Rule 4(k)(1)(A) governed the jurisdictional analysis. *Id.* at 865. And Rule 4(k)(1)(A) governed both the original plaintiffs' claims and the opt-in plaintiffs' claims because "[p]ersonal jurisdiction must be determined on a claim-by-claim basis." *Id.* "[P]ersonal jurisdiction over one set of claims" could not give the court personal jurisdiction over the opt-in plaintiffs' separate claims, which had no connection to the State. *Id.* at 865-866.

The First Circuit took a different tack in *Waters* v. *Day & Zimmermann NPS, Inc.*, 23 F.4th 84 (1st Cir. 2022), *petition for cert. filed*, No. 21-1192 (U.S. Feb. 25, 2022). In *Waters*, the district court denied the defendants' motion to dismiss the nonresident opt-in plaintiffs' FLSA overtime claims, concluding that opt-in plaintiffs are not "real part[ies] in interest" and were irrelevant to the personal-jurisdiction analysis. *Waters* v. *Day & Zimmermann NPS, Inc.*, 464 F. Supp. 3d 455, 460-461 (D. Mass. 2020).

A divided panel of the First Circuit affirmed on different grounds. *Waters*, 23 F.4th at 92-100. The panel

first held, contrary to the district court, that FLSA opt-in plaintiffs are full "parties to the suit upon filing" their consent forms. *Id.* at 91. The panel noted its agreement with the Sixth and Eighth Circuits on this point. *Id.* at 90. But it went on to hold that, in federal-question cases in federal court, Rule 4(k)(1)(A)—and, by extension, the Fourteenth Amendment—apply only to the original plaintiff and only at the time of service. *Id.* at 92-94. As the panel saw it, Rule 4(k)(1)(A) does not "operate[ ] as a free-standing limitation on the exercise of personal jurisdiction" throughout a case. *Id.* at 93. If the original plaintiffs' claims satisfy Rule 4(k)(1)(A) and the Fourteenth Amendment, then the later opt-in plaintiffs' claims need not. *Id.* at 96. The First Circuit therefore concluded that the district court properly denied the defendant's motion to dismiss. *Id.* at 99-100.

The First Circuit acknowledged that it was splitting with the Sixth and Eighth Circuits. *Id.* at 97. But the panel majority disagreed with the Sixth and Eighth Circuits on the threshold question of whether Rule "4(k) and the Fourteenth Amendment apply to federal-law claims after a summons has been properly served pursuant to a state long-arm statute." *Id.* at 98. The First Circuit did not reach the question whether, *if* Rule 4(k)(1)(A) and the Fourteenth Amendment apply to those claims, *Bristol-Myers Squibb* prevents a court from exercising specific jurisdiction over nonresident opt-in plaintiffs' claims with no connection to the forum State.

The First Circuit accordingly never addressed the question Canaday believes warrants this Court's attention. *See* Pet. 21-24. Quite the contrary: The two

circuits to have addressed *Bristol-Myers Squibb*'s application to FLSA actions—the Sixth and Eighth—agree with one another. *See* Pet. App. 10a; *Vallone*, 9 F.4th at 865-866. And there is every reason to think, given the First Circuit's recognition that FLSA opt-in plaintiffs are real parties in interest, *see Waters*, 23 F.4th at 91, that if that panel *did* reach the question, it would agree with its sister circuits.

In short, there is no split to resolve on the question forming the core of Canaday's petition.

2. Canaday also contends that this Court should grant certiorari to resolve "the massive division among district courts" on the question presented. Pet. 24. But that is actually a reason to *deny* certiorari. This Court has "in many instances recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court." *Arizona* v. *Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting).

This is one such instance. Canaday identifies various district court cases weighing in on the question presented. Pet. 24. Those cases come from every circuit except the D.C. and Federal Circuits. *See* Pet. App. 114a-120a. As time goes on, at least some of these cases will reach the courts of appeals. That process is already taking place: The Third Circuit, for example, heard argument on the issue in January. *See Fischer* v. *Fed. Express Corp.*, No. 21-1683 (3rd Cir.). If a true split develops as a result of these cases, "the experience of [this Court's] thoughtful colleagues on the district and circuit benches[ ] could yield insights (or reveal pitfalls) [this Court] cannot muster

guided by only [its] own lights." *Maslenjak* v. *United States*, 137 S. Ct. 1918, 1931 (2017) (Gorsuch, J., concurring in part and concurring in the judgment); *see also Calvert* v. *Texas*, 141 S. Ct. 1605, 1606 (2021) (Sotomayor, J., respecting the denial of certiorari) ("The legal question [petitioner] presents is complex and would benefit from further percolation in the lower courts prior to this Court granting review."); *Box* v. *Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1784 (2019) (Thomas, J., concurring in denial of second question presented "because further percolation may assist [this Court's] review of this issue of first impression"). Intervening now risks short-circuiting the normal process and depriving this Court of the "ability to learn more about the underlying issue." Tom S. Clark & Jonathan P. Kastellec, *The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model*, 75 J. of Pol. 150, 152 (2013). Further percolation, not premature plenary review, is the correct course.

II. THIS IS A POOR VEHICLE TO DECIDE AN ISSUE WITH LIMITED PRACTICAL EFFECT.

Canaday contends that the sky will fall if this Court does not intervene, with the Sixth Circuit's decision supposedly disrupting class actions, multidistrict litigations, and more. *See* Pet. 25-29. It will not. And should it prove unduly difficult for employees to join together in a FLSA collective action following the Sixth Circuit's ruling—a big if—Congress or the Advisory Committee on Civil Rules can fix it. This Court need not.

1. Echoing the dissenting judge below, Canaday maintains that the Sixth Circuit's decision means that

FLSA collective actions will now "be splintered into dozens, if not hundreds, of lawsuits all over the country." Pet. 25 (quoting Pet. App. 53a (Donald, J., dissenting)). That fear is overblown. Plaintiffs can ensure that a court has personal jurisdiction over all claims in a FLSA collective action by filing "the action in a jurisdiction that possessed general jurisdiction over the defendant." Pet. App. 11a; *see also Bristol-Myers Squibb*, 137 S. Ct. at 1783 (explaining that "the California and out-of-state plaintiffs" could "join[ ] together in a consolidated action in the States that have general jurisdiction over" Bristol-Myers Squibb). This, in fact, is a "traditional[ ]" way of proceeding in FLSA actions. Pet. App. 11a. Plaintiffs also can sue in a State, if there is one, with a connection to all of their claims. For instance, if the plaintiffs worked in various States, but reported to a regional office allegedly responsible for underpaying all of them, the employees might be able to join together in a suit in the State with the regional office. *Cf. id.* at 56a n.2 (noting that one putative collective-action member works from her home in Missouri but reports to a Chicago office).

Even if all plaintiffs cannot sue in one State, FLSA challenges can still be orderly and coordinated. Here, for example, after the district court limited the collective action to Tennessee-based claims, review nurses in Georgia filed a collective action in the Northern District of Georgia, *see Baker* v. *Anthem Cos.*, No. 1:21-cv-4866 (N.D. Ga.), and review nurses in Minnesota filed a collective action in the District of Minnesota, *see Learing* v. *Anthem Cos.*, No. 0:21-cv-2283 (D. Minn.). Plaintiffs' counsel across all three cases is the same, allowing for economies of scale and coordinated proceedings. *See*, *e.g.*, *In re Sorin 3T Heater-Cooler*

Sys. Prods. Liab. Litig., 273 F. Supp. 3d 1357, 1358 (J.P.M.L. 2017) (noting that the use of "informal coordination" can be "sufficient to minimize any overlap in pretrial proceedings").

And even if Canaday's fears of splintering were to become both real and realized, this Court would not need to intervene. Congress could simply do for the FLSA what it has done for a host of other federal statutes: authorize nationwide service of process. *See* Pet. App. 13a (collecting statutes). "Congress knows how to authorize nationwide service of process when it wants to provide for it." *Omni Cap. Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 106 (1987). When it has done so, "such service establishes personal jurisdiction." *Laurel Gardens, LLC* v. *McKenna*, 948 F.3d 105, 122 (3d Cir. 2020) (citation omitted). The only constitutional limitation "would arise from the Fifth Amendment's Due Process Clause and its requirements of minimum contacts with the United States" as a whole. Pet. App. 12a. But this bar generally is easily cleared for domestic corporations, *see Laurel Gardens*, 948 F.3d at 122 (company headquartered and incorporated in United States had sufficient contacts with United States), so the practical effect would be to grant every federal district court personal jurisdiction over nearly every FLSA case. *See* Pet. App. 13a.

The Advisory Committee on Civil Rules, with this Court's concurrence, also could amend Rule 4(k) to allow federal courts to exercise personal jurisdiction to the full extent allowable under the Fifth Amendment. *See* A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 Fla. L. Rev. 979, 982 (2019). This,

too, would resolve most personal-jurisdiction issues in FLSA collective actions.

2. Canaday also contends that the decision below "would seriously disrupt aggregate litigation in federal court," identifying as at risk multidistrict litigation and class actions, as well as "[o]ther types of representative suits" like those "involving administrators, trustees, and guardians." Pet. 27-28.

Canaday's concerns are groundless. Multidistrict litigation is about venue, not personal jurisdiction. *See In re FMC Corp. Pat. Litig.*, 422 F. Supp. 1163, 1165 (J.P.M.L. 1976) (per curiam). "Transfers" under the multidistrict litigation statute "are simply not encumbered by considerations of in personam jurisdiction." *Id.*; *see also In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 583 n.8 (5th Cir. 2014) (in a multidistrict litigation, only the transferor court need have personal jurisdiction over the claims); John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 Tul. L. Rev. 2225, 2227-28 (2008) ("Congress gave the Panel broad powers to transfer * * * without consideration of personal jurisdiction over the parties * * * ." (footnote omitted)). Multidistrict litigation also "implicates a different statute, a different history, and a different body of caselaw." Pet. App. 25a (citations omitted). As the Sixth Circuit noted, "[t]hose material differences may lead to a distinct approach." *Id.* In fact, multidistrict litigation could provide yet another solution for FLSA collective-action plaintiffs: To the extent a collective action cannot be brought in a single State, plaintiffs could file separate collective actions in the appropriate jurisdictions and then seek consolidation by the Judicial Panel on Multidistrict Litigation. *See* 28 U.S.C. § 1407(a).

Class actions are likewise "fundamentally different from collective actions under the FLSA." *Genesis Healthcare Corp.* v. *Symczyk*, 569 U.S. 66, 74 (2013); *see also Waters*, 23 F.4th at 99 (agreeing with decision below that "FLSA collective actions and Rule 23 class actions are dissimilar in myriad ways"). One key difference is party status: "[E]very plaintiff who opts in to a collective action has party status, whereas unnamed class members in Rule 23 class actions do not." *Halle* v. *West Penn Allegheny Health Sys. Inc.*, 842 F.3d 215, 225 (3d Cir. 2016) (citation omitted). As parties, opt-in plaintiffs enjoy "the same status in relation to the claims of the lawsuit as do the named plaintiffs." *Prickett* v. *DeKalb Cnty.*, 349 F.3d 1294, 1297 (11th Cir. 2003) (per curiam). Unnamed class members do not; only "the lead plaintiff[ ]" has "earn[ed] the right to represent the[ir] interests * * * by satisfying all four criteria of Rule 23(a) and one branch of Rule 23(b)." *Mussat* v. *IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1126 (2021). For that same reason, a "properly conducted class action[ ]" can bind nonparty class members. *Taylor* v. *Sturgell*, 553 U.S. 880, 894 (2008). But in FLSA collective actions, the judgment only binds plaintiffs who affirmatively opt into the action. *See Smith* v. *Pro. Transp., Inc.*, 5 F.4th 700, 703 (7th Cir. 2021). These differences have led the Sixth and Seventh Circuits to conclude that *Bristol-Myers Squibb* does not apply to unnamed class members in class actions. *See Lyngaas* v. *Ag*, 992 F.3d 412, 435 (6th Cir. 2021); *Mussat*, 953 F.3d at 448. Thus, even though *Bristol-Myers Squibb,* properly understood, applies to class actions as well as collective actions, *see Lyngaas*, 992 F.3d at 440-443 (Thapar, J., concurring in part and dissenting in part),

these differences make this case a poor vehicle to resolve the class-action question.

Canaday's concern about the Sixth Circuit's rule affecting suits brought by fiduciaries rests on a misunderstanding. Fiduciary cases involve one claim divided between a person who "is entitled to enforce the right," the fiduciary, and "the person who ultimately will benefit from the recovery," the beneficiary. 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure: Civil § 1543 (3d ed. 2021 update); John E. Kennedy, *Federal Rule 17(a): Will the Real Party in Interest Please Stand*, 51 Minn. L. Rev. 675, 678 (1967) (similar). The real parties in interest in fiduciary cases are the fiduciaries. Fed. R. Civ. P. 17(a)(1); 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure: Civil § 1548 (3d ed. 2021 update) (explaining that administrators, guardians, and trustees have "real-party-in-interest status"). Beneficiaries need not be joined. Fed. R. Civ. P. 17(a)(1). So it is hard to see how the Sixth Circuit's decision could affect these cases. *See Lightfoot* v. *Cendant Mortg. Corp.*, 137 S. Ct. 553, 562 (2017) (explaining that personal jurisdiction is a court's "power over the parties before it"). And should the beneficiary for whatever reason have to join a proceeding, their *claim* would be identical to the one already being pressed by the fiduciary, making the personal-jurisdiction analysis identical. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781 (explain that specific jurisdiction requires "a connection between the forum and the specific claims at issue").

III. THE SIXTH CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENT.

1. The Sixth Circuit held that where "nonresident plaintiffs opt into a putative collective action under the FLSA, a court may not exercise specific personal jurisdiction over claims unrelated to the defendant's conduct in the forum State." Pet. App. 10a. The court's conclusion is fully consistent with this Court's precedent.

To start, because the FLSA does not authorize nationwide service of process, Rule 4(k)(1)(A) governs the personal-jurisdiction analysis. Pet. App. 7a; *see Walden*, 571 U.S. at 283 (applying Rule 4(k)(1)(A) in federal-question case). Rule 4(k)(1)(A), in turn, incorporates the Fourteenth Amendment's Due Process Clause. Pet. App. 7a; *see, e.g.*, *Walden*, 571 U.S. at 283. *Bristol-Myers Squibb* then requires "a claim-specific and [defendant]-specific relationship between the out-of-state claims and" the forum State. Pet. App. 8a; *see* 137 S. Ct. at 1781.

The nonresident opt-in plaintiffs' claims failed this test, the Sixth Circuit concluded, because their claims "look just like the claims in *Bristol-Myers*." Pet. App. 10a. Like in *Bristol-Myers Squibb*, each nonresident opt-in plaintiff below was a "real party in interest" to a mass action whose only connection to the forum was the similarity between their claim and residents' claims. *Id.* And like in *Bristol-Myers Squibb*, the district court could not exercise specific jurisdiction over Anthem as to those claims. *Id.*

2. Canaday fights every premise of the Sixth Circuit's reasoning. *See* Pet. 30-34. She is wrong across the board.

Canaday first argues that "[n]o statute, constitutional provision, or rule suggests" that opt-in plaintiffs must demonstrate a connection between their claims and the forum State. *Id.* at 30. The way she sees it, the FLSA evinces an "unyielding desire to unify collective actions in a single proceeding"; the Fifth Amendment, not the Fourteenth, applies to FLSA collective actions; and Rule 4 only requires that "the named plaintiff or plaintiffs effectuate service of process and comply with state-law personal-jurisdiction rules." *Id.* at 30-31 (emphasis omitted).

All of that is wrong. *First*, the "desire to unify collective actions in a single proceeding," *id.* at 30, however "unyielding," is not a license to ignore settled rules of personal jurisdiction. A federal court's exercise of personal jurisdiction must be rooted in "a federal statute or rule." *Omni*, 484 U.S. at 102 (citation omitted). "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1555 (2017). Congress can, if it chooses to, authorize nationwide service of process in a statute and thereby give federal courts nationwide personal jurisdiction over claims arising under the statute. *See supra* p. 17; *Omni*, 484 U.S. at 106 ("Congress knows how to authorize nationwide service of process when it wants to provide for it."); Fed. R. Civ. P. 4(k)(1)(C) ("Serving a summons * * * establishes personal jurisdiction over a defendant * * * when authorized by a federal statute."). But "the FLSA does not contain a nationwide service provision." Pet. App. 7a. Courts cannot fill in that purported gap. *Omni*, 484 U.S. at 106.

Second, the Fourteenth Amendment, not the Fifth Amendment, governs this case. The Fifth Amendment would apply if the FLSA authorized nationwide service of process. *See supra* p. 17. But it does not. So personal jurisdiction over defendants in FLSA collective actions is grounded in Rule 4(k)(1)(A), Pet. App. 7a, which links "a federal court's authority to assert personal jurisdiction * * * to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located,' " *Walden*, 571 U.S. at 283 (quoting Fed. R. Civ. P. 4(k)(1)(A)). Because a state court's exercise of personal jurisdiction is governed by the Fourteenth Amendment's Due Process Clause, that clause also governs a *federal court's* exercise of personal jurisdiction. *See id.*; *Daimler*, 571 U.S. at 125; Pet. App. 12a-14a. That is so even if the court's subject-matter jurisdiction is based on a federal question. *See, e.g.*, *Walden*, 571 U.S. at 281 (*Bivens* claim).

And *third*, Rule 4(k)(1)(A)'s territorial limitations on a federal court's personal jurisdiction do not evaporate once the named plaintiff "effectuate[s] service of process and compl[ies] with state-law personal-jurisdiction rules." Pet. 31. As Judge Silberman has explained, this disappearing-rule "argument equates the method of service that Rule 4(k)(1) provides for initiating suits generally ('[s]erving a summons or filing a waiver of service') with the territorial limitations on amenability to service (and therefore personal jurisdiction) set out in that provision's subsections." *Molock* v. *Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 309 (D.C. Cir. 2020) (Silberman, J., dissenting). Rule 4(k)'s "territorial limitations on amenability to service (and therefore personal jurisdiction) * * * remain operative throughout the proceedings." *Id.* "Otherwise,

litigants could easily sidestep the territorial limits on personal jurisdiction simply by adding claims—or by adding plaintiffs, for that matter—after complying with Rule 4(k)(1)(A) in their first filing." *Id.*; *see also* Pet. App. 16a (similar). So while opt-in plaintiffs need not serve a summons on a defendant who has been previously served, Rule 4(k)(1)(A) nonetheless demands they demonstrate that the defendant is *amenable* to service as to their claims and thereby subject to the court's personal jurisdiction on them.

2. Canaday next argues that FLSA collective actions are a special type of "representative action[ ]" in which opt-in plaintiffs "are not required to independently satisfy the prerequisites of federal jurisdiction." Pet. 32. Wrong again.

FLSA collective actions are not representative actions. When originally enacted in 1938, the FLSA "gave employees and their 'representatives' the right to bring actions to recover amounts due under the FLSA." *Hoffmann-La Roche Inc.* v. *Sperling*, 493 U.S. 165, 173 (1989). "No written consent requirement of joinder was specified by the statute." *Id.* Predictably, allowing "plaintiffs lacking a personal interest in the outcome" to file representative suits led to "excessive litigation." *Id.*; *see also Knepper* v. *Rite Aid Corp.*, 675 F.3d 249, 253-256 (3d Cir. 2012) (recounting history). Congress responded by passing the Portal-to-Portal Act of 1947, which struck the representative-action provision and added the opt-in requirement. *Hoffman-La Roche*, 493 U.S. at 173. These changes were "for the purpose of limiting private FLSA plaintiffs to employees who asserted clams in their own right and freeing employers of the burden of representative actions." *Id.* This purpose was not hard to discern: The

title of the section is "Representative Actions Banned." Portal-to-Portal Act of 1947, Pub. L. No. 80-49, § 5(a), 61 Stat. 84, 87; *see also Campbell* v. *City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir. 2018) ("Congress added the FLSA's opt-in requirement with the express purpose of 'bann[ing]' such actions under the FLSA.").

Once a plaintiff opts into a collective action, "there is no statutory distinction between the roles or nomenclature assigned to the original and opt-in plaintiffs." *Campbell,* 903 F.3d at 1104. Opt-in plaintiffs instead "enjoy party status as if they had initiated the action." Pet. App. 3a; *see also Prickett*, 349 F.3d at 1297 ("[O]pt-in plaintiffs * * * have the same status in relation to the claims of the lawsuit as do the named plaintiffs."). This "joinder process," *Genesis Healthcare*, 569 U.S. at 70 n.1, ensures that the judgment only binds those similarly situated employees who affirmatively agreed to have their rights adjudicated in the collective action, *Smith*, 5 F.4th at 703. A FLSA collective action is thus "a kind of mass action, in which aggrieved workers act as a collective of *individual* plaintiffs with *individual* cases—capitalizing on efficiencies of scale, but without necessarily permitting a specific, named representative to control the litigation, except as the workers may separately so agree." *Campbell*, 903 F.3d at 1105.

Given all this, the Sixth Circuit rightly held that opt-in plaintiffs are no different than any party to a lawsuit, and must "meet [their] burden for obtaining relief and satisfy the other requirements of party status." Pet. App. 10a. That includes demonstrating an adequate connection between their claims and the defendant's conduct in the forum. *Id.*

That FLSA collective actions might be modeled on "spurious class actions" does not change that. *See* Pet. 9, 32 (citations omitted). The "spurious" class action was a way under a previous version of Rule 23 for "numerous persons interested in a common question of law or fact * * * to clean up a litigious situation." 2 James Wm. Moore & Joseph Friedman, Moore's Federal Practice § 23.04(3), at 2241 (1938) ("1938 Moore's"). But unlike a "true" class action, the judgment in a spurious class action would not bind absent members. *See Knepper*, 675 F.3d at 255 n.9. Canaday contends that "opt-in plaintiffs in such actions were not counted for purposes of establishing jurisdiction," pointing only to the 1938 version of *Moore's Federal Practice* for support. Pet. 32. But Moore's 1938 treatise says that opt-in plaintiffs do not affect a court's *subject-matter* jurisdiction; it is silent about the relationship between opt-in plaintiffs' claims and the court's personal jurisdiction. *See* 1938 Moore's at 2241-42. And anything Moore had to say in 1938 about a court's personal jurisdiction would be irrelevant anyway: The treatise was published seven years before this Court's "pathmarking," *Goodyear Dunlop Tires Operations, SA* v. *Brown*, 564 U.S. 915, 919 (2011), decision in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). *See BNSF*, 137 S. Ct. at 1557-58 (warning "against reliance" on cases "decided before this Court's transformative decision * * * in *International Shoe*").

3. Canaday relatedly argues that "the personal-jurisdiction analysis occurs 'at the level of the suit,' " which here "is the FLSA collective action." Pet. 32-33 (citation omitted). But if that is right, *Bristol-Myers Squibb* should have come out the other way. *Bristol-Myers Squibb* concerned a variety of claims across

eight different complaints that were consolidated into one proceeding before a single judge. 137 S. Ct. at 1778. Some of the claims were filed by California residents; others were filed by nonresidents with no connection to the State. *Id.* Under Canaday's theory, those in-state claims should have saved the out-of-state claims. Indeed, that is what the California Supreme Court held: that "the claims of the nonresidents" and "the claims of the California residents" satisfied that court's "sliding scale approach to specific jurisdiction." *Id.* at 1778-79 (citation omitted). But this Court rejected that close-enough approach. *Id.* at 1781. As the Court explained, "[t]he mere fact that" a court could exercise specific jurisdiction over *other* claims in the lawsuit "does not allow the State to assert specific jurisdiction over the nonresidents' claims." *Id.* "What is needed—and what is missing here—is a connection between the forum and the *specific claims at issue*." *Id.* (emphasis added).

In arguing the contrary, Canaday points to one stray quote from *Bristol-Myers Squibb*: " 'the suit' must 'aris[e] out of or relat[e] to the defendant's contacts with the forum.' " Pet. 33 (emphasis omitted) (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780). But that misses the jurisprudential forest for the linguistic trees. Taken as a whole, *Bristol-Myers Squibb* is clear: It is the claim, not the suit, that matters.

Bristol-Myers Squibb drew on fundamental personal-jurisdiction principles in its recognition that personal jurisdiction is claim-, not suit-, specific. *See* 137 S. Ct. at 1781 ("In order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence

that takes place in the forum State.' " (quoting *Goodyear,* 564 U.S. at 919)); *see also* 5B Charles Alan Wright, Arthur R. Miller & A. Benjamin Spencer, Federal Practice & Procedure: Civil § 1351 n.30 (3d ed. 2021 update) ("[I]f separate claims are pled, specific personal jurisdiction must independently exist for each claim and the existence of personal jurisdiction for one claim will not provide the basis for another claim."). Personal jurisdiction's claim-specific nature dates back to *International Shoe*, where the Court explained that a plaintiff may not "su[e] on causes of action unconnected with [a defendant's] activities" in the forum. 326 U.S. at 317; *see also* Pet. App. 17a (collecting other cases).

4. Canaday finally argues that the federalism interests underpinning this Court's personal-jurisdiction jurisprudence would not be offended by exercising jurisdiction over the nonresident opt-in plaintiffs' claims. Pet. 33-34. But by linking federal-court jurisdiction to state-court jurisdiction, Rule 4(k)(1)(A) imports the Fourteenth Amendment's federalism concerns to most federal-question cases heard in federal court. *See Walden*, 571 U.S. at 283.

That makes sense. State and federal courts generally enjoy concurrent jurisdiction to enforce federal statutes. *See, e.g.*, *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 477-478 (1981) ("[S]tate courts may assume subject-matter jurisdiction over a federal cause of action absent provision by Congress to the contrary or disabling incompatibility between the federal claim and state-court adjudication."). The FLSA is no exception: It grants jurisdiction to both federal and state courts to hear wage-and-hour cases. 29 U.S.C. § 216(b). Linking a federal court's jurisdiction

to the State in which it sits ensures that "coordinate state and federal courts sitting side by side," *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941), and having an equal ability to hear the claim, have equal *power* to hear that claim. Decoupling federal and state power would encourage vertical forum shopping. FLSA plaintiffs could pick the federal court of their choice and deprive the State that *does* have an interest in those claims—whether because the relevant conduct occurred in that State or because the defendant is incorporated or headquartered there—from hearing them. This is exactly the type of "federalism interest" the *Bristol-Myers Squibb* Court found "decisive." 137 S. Ct. at 1780.

Canaday's arguments boil down to a complaint that the Sixth Circuit did not allow all claims relating to Anthem's supposedly unlawful conduct to be adjudicated in one lawsuit. This Court has before rejected that attempt to place plaintiffs' litigation preferences over a defendant's due-process rights, explaining that "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284. The Sixth Circuit's decision is consistent with that principle and does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES M. HARRIS
SEYFARTH SHAW LLP
2029 Century Park E
Suite 3500
Los Angeles, CA 90067

BRETT C. BARTLETT
Counsel of Record
KEVIN M. YOUNG
LENNON B. HAAS
SEYFARTH SHAW LLP
1075 Peachtree Street NE
Suite 2500
Atlanta, GA 30309
(404) 885-1500
bbartlett@seyfarth.com

Counsel for Respondent

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