No. _____

In the
Supreme Court of the United States

MONSANTO COMPANY,

Petitioner,

v.

NANCY C. SALAS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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April 18, 2025

QUESTION PRESENTED

This case presents the same question that is presently before the Court in *Monsanto Co. v. Durnell*, No. 24-1068 (docketed April 9, 2025). For all the reasons set forth in the petition in *Durnell*, this Court should grant the petition in No. 24-1068 and hold this case pending final resolution of that case.

The question presented is:

Whether FIFRA preempts a state-law failure-to-warn claim where EPA has repeatedly concluded that the warning is not required and the warning cannot be added to a product without EPA approval.

PARTIES TO THE PROCEEDING

Petitioner Monsanto Company was the Defendant-Appellant in the Eleventh Circuit. Respondent Nancy Salas was the Plaintiff-Appellee in the Eleventh Circuit.

CORPORATE DISCLOSURE STATEMENT

Petitioner Monsanto Company is an indirect, wholly owned subsidiary of Bayer AG, a publicly held corporation. No other publicly held corporation owns 10% or more of Monsanto's stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings in the U.S. District Court for the Southern District of Florida and the U.S. Court of Appeals for the Eleventh Circuit:

Salas v. Monsanto Co., No. 24-14030 (11th Cir.) (Mar. 19, 2025).

Salas v. Monsanto Co., No. 1:21-cv-21217 (S.D. Fla. Nov. 20, 2024).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

PETITION FOR WRIT OF CERTIORARI

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") includes a "[u]niformity" provision that expressly preempts all state "requirements for labeling or packaging" that are "in addition to or different from those required under" FIFRA. 7 U.S.C. §136v(b). There is a square and acknowledged circuit split over the scope of that provision as applied to the particular product at issue here. Specifically, in evaluating suits against Petitioner for its Roundup product (of which there are many), the circuits have split over "whether, once the Environmental Protection Agency ('EPA') registers and approves a pesticide label that omits a particular health warning, a state-law duty to include that warning is preempted." *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 370-71 (3d Cir. 2024).

In a thorough, 65-page opinion, the Third Circuit held that FIFRA preempted a state-law failure-to-warn claim that sought to hold Monsanto liable for failing to warn users of the alleged carcinogenic effects of glyphosate, the active ingredient in Monsanto's Roundup product. The Third Circuit explained that EPA "regulations promulgated to implement FIFRA require the health warnings on a pesticide's label to conform to the proposed label approved by the EPA during the registration process." *Id.* at 371. Thus, when EPA has conducted "extensive review of [the] scientific evidence" of a potential health issue (as it had with glyphosate) and "approved proposed labels omitting a [health] warning" on that issue, FIFRA preempts a "state-law duty to include" that same warning. *Id.*

As the Third Circuit recognized, however, its "analysis differs from" that of its "colleagues in other courts." *Id.* at 399. The Ninth and Eleventh Circuits (as well as intermediate appellate courts in California, Oregon, and Missouri) have held that FIFRA does not preempt state-law failure-to-warn claims that seek to hold Monsanto liable for not warning users of the alleged carcinogenic effects of glyphosate. *See* App.2-3; *Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021); *Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024); *Durnell v. Monsanto Co.*, 2025 WL 451540 (Mo. Feb. 11, 2025), *appeal denied*, No. SC100975 (Mo. 2025), *petition for cert. filed*, No. 24-1068 (U.S. Apr. 4, 2025); *Johnson v. Monsanto Co.*, 554 P.3d 290 (Or. Ct. App. 2024), *review denied*, 562 P.3d 237 (Or. 2024) (table); *Pilliod v. Monsanto Co.*, 282 Cal.Rptr.3d 679 (Ct. App. 2021), *appeal denied*, No. S270957 (Cal. Nov. 17, 2021).

Monsanto has asked this Court to review that acknowledged and consequential split in authority in *Monsanto Co. v. Durnell*, No. 24-1068 (docketed April 9, 2025). *Durnell* presents the question that has divided the circuits in an ideal posture as the case involves a full trial record, the jury rejected all of Durnell's claims save his failure-to-warn claim, and the judgment is unambiguously final. Accordingly, Monsanto urges this Court to grant the petition in *Durnell* and hold this case pending resolution of *Durnell* on the merits. If the Court prefers a case arising out of the federal courts, it could grant this petition instead of, or in addition to, *Durnell*. Either way, the Court should review and resolve the question presented which has divided courts and arises in tens of thousands of cases involving Roundup alone.

OPINIONS BELOW

The opinion of the Eleventh Circuit is reported at 2025 WL 866565 and reproduced at App.1-4. The judgment of the Southern District of Florida is unreported but reproduced at App.4-5.

JURISDICTION

The Eleventh Circuit issued its opinion on March 19, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The full text of 7 U.S.C. §136v(a)-(b) is reproduced at App.6.

STATEMENT OF THE CASE

A. Legal Background

Congress created FIFRA through a series of enactments to regulate the use, sale, and labeling of pesticides. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601 (1991). As originally enacted in 1947, *see* Pub. L. No. 80-104, 61 Stat. 163, FIFRA "was primarily a licensing and labeling statute." *Mortier*, 501 U.S. at 601 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991 (1984)). In 1972, Congress "significantly strengthened FIFRA's registration and labeling standards" in response to "environmental and safety concerns." *Id.*; *see also* Federal Environmental Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973. The 1972 amendments effectively "transformed FIFRA from a labeling law into a comprehensive regulatory statute." *Mortier*, 501 U.S. at 601 (quoting *Ruckelshaus*, 467 U.S. at 991).

Under FIFRA, no pesticide may be sold or distributed domestically without EPA registration. 7 U.S.C. §136a(a). To register a pesticide, EPA must determine (among other things) that the pesticide poses no unreasonable risk of adverse effects on human health and the environment, *see* 7 U.S.C. §§136a(c)(5)(C), 136(bb); 40 C.F.R. §152.112(e), and that its labeling complies with FIFRA's requirements, including its misbranding prohibition, *see* 7 U.S.C. §136a(c)(5)(B). "A pesticide is 'misbranded' if its label contains a statement that is 'false or misleading in any particular,'" *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 438 (2005), or "does not contain a warning or caution statement which may be necessary and if complied with[] … is adequate to protect health and the environment," 7 U.S.C. §136(q)(1)(G).

EPA has published regulations that govern the registration process. *See* 40 C.F.R. pt. 152. Under those regulations, manufacturers must submit voluminous scientific and safety data (including carcinogenicity studies), as well as proposed labeling that includes any precautionary statements regarding potential effects on human health. *E.g.*, 7 U.S.C. §136a(c); 40 C.F.R. §§156.10(a)(1)(vii), 156.60, 158.500. EPA reviews the scientific studies and safety data to ensure that the pesticide does not impose any unreasonable risk of adverse effects on human health, including cancer. And it reviews and approves the proposed label to ensure that it complies with FIFRA's requirements. *See* 40 C.F.R. §§152.40-55. If EPA has reason to believe a pesticide violates FIFRA's provisions, EPA may issue "stop sale, use, or removal" orders, 7 U.S.C. §136k(a), seize and condemn the offending products, *id.* §136k(b), and seek civil and

criminal penalties from the manufacturer, *id.* §136*l*. EPA must review a pesticide's registration every 15 years. *Id.* §136a(g)(1)(A)(iii)(II). This process requires EPA to consider whether any "labeling changes" are necessary given new information and whether the product still meets FIFRA's requirements, including its misbranding prohibition. 40 C.F.R. §155.58(b)(4).

Pesticide registrants have a continuing obligation to comply with FIFRA's labeling requirements. Once EPA approves a label, the "label is the law." EPA, Pesticide Registration Manual 3 (last updated April 2017), https://perma.cc/3GTB-3892. It is illegal to distribute a pesticide with labeling substantially different from the EPA-approved label. 7 U.S.C. §136j(a)(1)(B). And the manufacturer must seek approval for virtually any substantive change to that label. 40 C.F.R. §§152.44, 152.46; 7 U.S.C. §136a(c)(9)(C). While the manufacturer may make some "minor modifications" through a streamlined "notification" process, it may not change any "precautionary statements" via that notification process. *See* EPA, Office of Pesticide Programs, *Pesticide Registration Notice 2000-5* (May 10, 2000), https://perma.cc/ANB4-UGG9; EPA, Office of Pesticide Programs, *Pesticide Registration Notice 98-10* (Oct. 22, 1998), https://perma.cc/EZ7M-62MY; 40 C.F.R. §156.70(c). Instead, for such changes, it may proceed only by formal amendment.

FIFRA establishes a program for federal-state cooperation in regulating pesticides. *See Mortier*, 501 U.S. at 601-02. Section 136v, titled "Authority of States," sets forth key principles of that relationship. *See* 7 U.S.C. §136v. Section 136v(a) recognizes that,

as a general matter, states retain their historic authority to regulate pesticide sale or use, provided that a state does not permit a sale or use that FIFRA, or EPA's implementing regulations, prohibit:

> (a) In general
>
> A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

Id. §136v(a).

But when it came to labeling, FIFRA sought to ensure that manufacturers would not have to comply with "50 different labeling regimes." *Bates*, 544 U.S. at 452. FIFRA thus forbids a state from imposing any additional or different requirements on pesticide labeling or packaging than those imposed under FIFRA:

> (b) Uniformity
>
> Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. §136v(b).

B. Factual Background

Monsanto produces Roundup, "a weed-killer that employs glyphosate as its active ingredient." *Schaffner*, 113 F.4th at 373.[1] EPA has registered

[1] While courts have generally referred to a single Roundup product, in reality, Monsanto has produced dozens of Roundup-

pesticides containing glyphosate since 1974. *See* EPA, *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* 12 (Dec. 12, 2017), https://perma.cc/UWM2-6BHB. EPA has repeatedly evaluated whether glyphosate is carcinogenic. *Id.* In 1986, for example, EPA found that the evidence did not support a conclusion that glyphosate causes cancer, and EPA prescribed "Required Labeling" with no cancer warning. *Id.*; *see also* EPA, Office of Pesticides and Toxic Substances, *Guidance for the Reregistration of Pesticide Products Containing Glyphosate as the Active Ingredient* 6-8, 20-34 (June 1986), https://perma.cc/DTH7-FR4V. In 1991, EPA's Carcinogenicity Peer Review Committee classified glyphosate "as a Group E chemical: 'Evidence of Non-Carcinogenicity for Humans.'" *Revised Glyphosate Issue Paper* 13. In 1993, EPA completed its statutory re-registration of glyphosate, concluding that "glyphosate products, labeled and used as specified [by EPA], will not pose unreasonable risks or adverse effects to humans." EPA, *Reregistration Eligibility Decision (RED) Glyphosate* 57 (Sept. 1993), https://perma.cc/528H-F4FN. And in subsequent years, EPA has reiterated its conclusion that glyphosate is not carcinogenic. *Revised Glyphosate Issue Paper* 12-13. In 2008, for instance, EPA determined that glyphosate is "not a carcinogen" based on its review of an "extensive database" of research. Glyphosate; Pesticide Tolerances, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008). Public health regulators worldwide have similarly found that

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branded products over the decades, each of which has been approved by EPA for marketing without a cancer warning.

glyphosate does not cause cancer in humans. *See Hardeman*, 997 F.3d at 951.

In 2015, against that global consensus, a working group of the International Agency for Research on Cancer ("IARC") classified glyphosate as a "Group 2A" agent—meaning it is, in IARC's view, "probably carcinogenic to humans" based on "limited" evidence of cancer in humans. IARC, 112 Some Organophosphate Insecticides and Herbicides 398 (2015), https://perma.cc/9TPL-278R. IARC's classification reflected a hazard assessment, meaning a theoretical determination of carcinogenic potential; it did not assess the *actual* risk glyphosate poses under real-world conditions. *Id.* at 10-11; *see also In re Roundup Prods. Liab. Litig.*, 390 F.Supp.3d 1102, 1108, 1113-14 (N.D. Cal. 2018) (noting the "limited" and "abstract" nature of IARC's assessment).

When IARC released its assessment of glyphosate, EPA was already engaged in its statutory registration review. During that review, the agency developed an extensive database on the carcinogenic potential of glyphosate, reviewing 736 studies as part of an open literature review as well as "numerous studies … submitted to the agency" by independent parties. *Revised Glyphosate Issue Paper* 21-22. The agency specifically examined the studies "included in the evaluation by IARC." *Id.* at 23. It further convened a scientific advisory panel to contribute to its analysis. After considering IARC's classification, EPA again determined that "[t]he strongest support" is for classifying glyphosate as "not likely to be carcinogenic to humans." *Id.* at 143. And in 2019, after accounting for public comments, EPA issued a

proposed registration review decision in which the agency reiterated both its conclusion that glyphosate is not carcinogenic to humans and its disagreement with IARC—noting that its evaluation was "more robust" and "more transparent" than IARC's and "consistent with" those of "other regulatory authorities and international organizations." EPA, *Glyphosate Proposed Interim Registration Review Decision* 7-8 (Apr. 2019), https://perma.cc/8K63-HD36. EPA was hardly the only authority to reject IARC's findings. No shortage of national and international health organizations also rejected IARC's position, including the European Union's European Chemicals Agency, its European Food Safety Authority, and the national health authorities of Australia, Canada, Germany, and New Zealand. *See Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1270 (9th Cir. 2023).

In an August 2019 letter rejecting a cancer warning for glyphosate, EPA again reaffirmed its determination that glyphosate is "not likely to be carcinogenic to humans." Letter from Michael L. Goodis, Director, Registration Division, EPA, Office of Chemical Safety & Pollution Prevention, to Registrants of Glyphosate (Aug. 7, 2019), https://perma.cc/WB3F-C5AQ. The proposed warning, which California law automatically requires because of IARC's classification, would have required manufacturers to add a label stating that glyphosate is "known" to cause cancer. In its letter, EPA explained that it "disagrees with IARC's assessment" and that it had "considered a more extensive dataset than IARC." *Id.* "Given EPA's determination," EPA concluded that a warning stating glyphosate causes cancer would render a pesticide "misbranded

pursuant to section 2(q)(1)(A) of FIFRA." *Id.*[2] That conclusion was consistent with how state environmental protection agencies had addressed glyphosate products for decades. Before California, *none* had attempted to require a cancer warning.

After considering public comments for a second time, EPA in 2020 finalized its interim registration review determination that glyphosate does not cause cancer, and again approved labeling with no cancer warning. Various parties challenged that decision in the Ninth Circuit. In response to those suits and a change in administration, EPA again reviewed its decision in early 2021. The agency reaffirmed the view espoused without interruption over the last six administrations: "[G]lyphosate is not likely to be a human carcinogen and … it does not pose human-health risks of concern." EPA.Br.17, *Nat. Res. Def. Council v. U.S. Env't Prot. Agency*, Nos. 20-70787, 20-70801 (9th Cir. May 18, 2021). The Ninth Circuit vacated EPA's 2020 Interim Decision in June 2022 after concluding that the agency failed to offer enough "analysis and explanation." *Nat. Res. Def. Council v. U.S. Env't Prot. Agency*, 38 F.4th 34, 52 (9th Cir. 2022). Consistent with the Ninth Circuit's ruling, EPA announced that it will "revisit and better explain

[2] EPA more recently stated that it "could approve" labels noting *both* the IARC classification *and* the contrary findings of EPA and other regulatory authorities. Letter from Michal Freedhoff, Assistant Administrator, EPA, Office of Chemical Safety & Pollution Prevention to Lauren Zeise, Office of Environmental Health Hazard Assessment, California EPA (Apr. 8, 2022), https://perma.cc/2Q2X-B8L2. But it simultaneously reiterated its assessment that glyphosate is likely not carcinogenic and its rejection of a warning that glyphosate causes cancer. *Id.*

its evaluation of the carcinogenic potential of glyphosate," but that "EPA's underlying scientific findings regarding glyphosate, including its finding that glyphosate is not likely to be carcinogenic to humans," remain the same. Memorandum from Cathryn Britton, Branch Chief, Risk Management and Implementation Branch V, Pesticide Re-evaluation Division, to Glyphosate Registration Review Docket (EPA-HQ-OPP-2009-0361) at 5-6 (Sept. 21, 2022), https://perma.cc/3KDJ-JT2N. Since then, EPA has continued to approve labels of numerous glyphosate-based pesticide products without cancer warnings. *See* EPA, Chemical Name: Glyphosate, https://perma.cc/7PHA-8UXP.[3]

C. Procedural History

In the wake of the IARC decision, more than 100,000 plaintiffs filed lawsuits in federal and state courts nationwide, alleging that Roundup caused their cancer and that Monsanto is liable for failing to warn them of glyphosate's purportedly carcinogenic properties.[4] In 2016, the Judicial Panel on

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[3] EPA has on at least two prior occasions approved labels that included a cancer warning. But EPA has acknowledged that those decisions were the result of an "implementation mistake." U.S.Br. at 17-19 & n.14, *Monsanto Co. v. Hardeman*, No. 19-16636 (9th Cir. filed Dec. 20, 2019).

[4] The massive volume of the litigation stems from two main factors. First, millions of Americans have used Roundup. And second, non-Hodgkin's lymphoma is a common and naturally occurring blood cancer. As of 2022, the plaintiffs' bar had spent an estimated $131 million on more than 625,000 television advertisements for Roundup litigation. *See* T. Joyce, Am. Tort Reform Ass'n, *When Plaintiffs' Attorneys Mislead the Public*, Bloomberg Law (Sept. 28, 2022), https://perma.cc/SV28-9BFW.

Multidistrict Litigation centralized cases alleging that Roundup caused plaintiffs' non-Hodgkin's lymphoma in the Northern District of California, where several cases were already pending. *See In re Roundup Prods. Liab. Litig.*, 214 F.Supp.3d 1346, 1348 (J.P.M.L. 2016); *see also, e.g.*, *Hardeman v. Monsanto Co.*, No. 3:16-cv-00525 (N.D. Cal. filed Feb. 1, 2016). This tidal wave of litigation forced Monsanto to remove glyphosate from the consumer version of Roundup.

That removal—and the ongoing litigation—has sparked fear among American farmers that Monsanto will be forced to remove glyphosate from the agricultural version of Roundup as well. Farmers describe Roundup as "a fabulous tool" and "one of the least harmful chemicals [they] use." P. Cohen, *Roundup Weedkiller Is Blamed for Cancers, but Farmers Say It's Not Going Away*, N.Y. Times (Sept. 20, 2019), https://perma.cc/J2LQ-BEKS. Indeed, farmers "continue to depend on Roundup," especially given global "increases [in] the demand for food." *Id.* And while the glyphosate lawsuits have been "a boon to trial lawyers who have made a career and a fortune" off of them, they risk forcing American farmers to return to the "miserable," "mind-numbing," and "back-breaking labor" that was necessary before Monsanto introduced glyphosate to the agricultural industry in the 1970s. B. Hurst, *Roundup Lawsuits Pose a Threat to My Missouri Farm*, Wall Street Journal (Sept. 13, 2024), https://perma.cc/M24F-TJTB. Moreover, removing glyphosate from shelves would force farmers to turn to other herbicides that are "harsher, more toxic[,] and more likely to drift and cause damage to surrounding vegetation." *Id.*

Since removing glyphosate from its consumer version of Roundup, Monsanto has settled many claims against it. But tens of thousands of claims remain pending in courts across the country. This is one of those cases.

In January 2021, after the MDL court's rulings that FIFRA neither expressly nor impliedly preempts state-law failure-to-warn claims, Respondent Nancy Salas sued Monsanto in Florida state court, alleging that her use of Roundup caused her to develop non-Hodgkin's lymphoma. App.2. Salas brought five counts against Monsanto under Florida law, including a failure-to-warn claim. D.Ct.Dkt.1-1 at 38-52. Monsanto removed the case to federal court, and the Judicial Panel on Multidistrict Litigation transferred the case to the Northern District of California for pre-trial proceedings. Because the MDL court had instructed the parties not to relitigate issues that it had already decided, Monsanto moved for summary judgment on preemption grounds by incorporating its earlier briefing before the MDL Court on that question, and Salas opposed the motion on the same basis. *See* Mot. at 1-2, *Salas v. Monsanto Co.*, No. 3:21-cv-6173 (N.D. Cal. filed June 15, 2023), Dkt.38. The MDL Court denied the motion. The Judicial Panel on Multidistrict Litigation then remanded the case back to the Southern District of Florida.

After the case returned to Florida, the Eleventh Circuit issued its decision in *Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024). The parties here then reached a settlement agreement. D.Ct.Dkt.74 at 1-2. Pursuant to that agreement, Salas agreed to amend

her complaint to dismiss all claims against Monsanto except for the failure-to-warn claim. Monsanto consented to entry of judgment against it on the failure-to-warn claim based on *Carson*, but expressly retained the right to appeal the judgment on FIFRA preemption grounds, with the amount of recovery depending on the ultimate result of the appeal. D.Ct.Dkt.74 at 1-2. The district court entered final judgment against Monsanto. The Eleventh Circuit summarily affirmed based on *Carson*. App.1-3 (citing *Carson*, 92 F.4th at 992).

REASONS FOR GRANTING THE PETITION

This case presents the same question that is presently before the Court in *Monsanto Co. v. Durnell*, No. 24-1068 (docketed April 9, 2025). That question has divided the federal circuits and state courts.[5] The question is deeply consequential for Monsanto, for its entire industry, and for farmers nationwide. The question is also ripe for this Court's review. Back in 2019, the federal government told the Ninth Circuit that it agreed with Monsanto on the merits of the question presented. *See* U.S.Br., *Monsanto Co. v. Hardeman*, No. 19-16636 (9th Cir. filed Dec. 20, 2019).

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[5] In addition to the decisions discussed *supra* at 1-2, Massachusetts and Hawaii courts have held that FIFRA preempts state-law claims that seek to hold Monsanto liable for failing to include a cancer warning on its Roundup products. *See* Mem. of Decision and Order on Defs.' Mot. for Summ. J., Dkt. 40, *Cardillo v. Monsanto Co.*, No. 2177CV00462 (Mass. Super. Ct. filed Oct. 21, 2024), *appeal granted*, No. 2024-P-1382 (Mass. filed Feb. 24, 2025); Order Granting Def.'s Mot. for Partial Summ. J., Dkt. 1058, *Peters v. Monsanto Co.*, No. 1CCV-20-0001630 (Haw. Cir. Ct. filed Oct. 25, 2023), *appeal granted*, *id.*, Dkt. 1166 (filed Mar. 13, 2024).

Then, in 2022, it told this Court that it need not "grant review unless and until a conflict in authority emerges." U.S.Br.19, *Monsanto Co. v. Hardeman*, No. 21-241 (U.S. filed May 10, 2022). That conflict has now emerged. The conflict could not be more square or acknowledged, as there is a conflict involving Monsanto's Roundup product and the Third Circuit deliberately parted company from its sister circuits, including the Eleventh Circuit's precedential opinion in *Carson*.

Monsanto has already asked this Court to resolve this question in *Monsanto Co. v. Durnell*, No. 24-1068 (docketed April 9, 2025). *Durnell* is the ideal vehicle to resolve the question, as the Court would have the benefit of a full trial record and there are no obstacles that would prevent the Court from considering the question presented. Nor are there any collateral issues that would distract from the Court's review. This Court routinely considers preemption questions on review of decisions from state courts, where preemption provides a federal-law defense. *See, e.g.*, *Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87 (2017); *Wyeth v. Levine*, 555 U.S. 555 (2009). Preemption issues can also arise in federal courts exercising diversity jurisdiction, as in the cases that have given rise to the circuit split. To the extent this Court prefers to review the question presented in a case arising in federal court in addition to, or in lieu of, *Durnell*, this case presents a clean vehicle for doing so. The nature of the settlement presents no jurisdictional obstacle, *see Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 (1982); *Linde v. Arab Bank, PLC*, 882 F.3d 314, 324-25 (2d Cir. 2018), and preserves a single, purely legal issue of federal law.

But whether the Court grants certiorari in *Durnell* or here or both (in which case the Court would presumably consolidate the cases for briefing and oral argument), the Court should not delay reviewing this question of surpassing importance to preemption jurisprudence and our Nation's agricultural sector.

CONCLUSION

This Court should grant the petition in No. 24-1068 and hold this case pending final resolution of that case or alternatively grant this petition for all the reasons articulated above and in the *Durnell* petition.

Respectfully submitted,

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April 18, 2025

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-14030

NANCY C. SALAS,

Plaintiff-Appellee,

v.

MONSANTO COMPANY, a foreign corporation,

Defendant-Appellant,

BAYER CORPORATION, a foreign corporation, et al.

Defendants.

Filed: Mar. 19, 2025

Before: Rosenbaum, Grant, and Abudu,
Circuit Judges.

OPINION

PER CURIAM:

Monsanto Company appeals a judgment against it—conceding that Circuit precedent requires us to affirm. We grant its unopposed motion for summary affirmance.

Monsanto manufactures Roundup®, a widely used herbicide. In *Carson v. Monsanto Co.*, we held

that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq*., did not preempt a Georgia plaintiff's state-law failure-to-warn claim related to Roundup®. 92 F.4th 980, 986 (11th Cir. 2024).

As relevant here, Nancy Salas sued Monsanto in Florida state court in 2021, alleging that she contracted non-Hodgkin lymphoma from her exposure to Roundup®. Salas asserted various state-law claims, including negligent failure to warn. Salas and Monsanto agreed to settle their dispute. The parties jointly stipulated that the district court would enter judgment against Monsanto on Salas's failure-to-warn claim, but Monsanto reserved the right to appeal the judgment on federal preemption grounds. The district court then entered final judgment against Monsanto. Monsanto now appeals.

Summary disposition is appropriate where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case[.]" *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).[1]

Carson controls here. On the merits of the preemption issue, the two cases are indistinguishable. Florida law, like Georgia law, "require[s] pesticide manufacturers to warn users of potential risks to health and safety" and thus parallels FIFRA. *Carson*, 92 F.4th at 992. And because "the holding of the first

[1] *Groendyke Transportation* is binding precedent in the Eleventh Circuit under *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

panel to address an issue" remains the law in this Circuit "unless and until" the Court sitting en banc or the Supreme Court intervenes, *Carson*'s analysis governs. *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001).

* * *

Because there is "no substantial question as to the outcome" of this appeal, we **GRANT** Monsanto's motion for summary affirmance and **AFFIRM** the judgment below. *Groendyke Transp., Inc.*, 406 F.2d at 1162.

Appendix B

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 21-21217

NANCY C. SALAS,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Filed: Nov. 19, 2024

FINAL JUDGMENT

Pursuant to the Parties' Joint Stipulation for Entry of Judgment (DE 74) and Settlement Agreement (DE 66)[1], the Court enters FINAL JUDGMENT, pursuant to Rule 58 of the Federal Rules of Civil Procedure, in favor of Plaintiff Nancy Salas and against Defendant Monsanto Company as to Count I in the Second Amended Complaint (DE 73), in the amount of fifty thousand dollars ($50,000.00), with each Party to bear their own costs and fees. This case remains CLOSED.

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[1] The Settlement Agreement was filed under seal.

DONE AND ORDERED in Chambers in Miami, Florida, this 19th day of November, 2024.

[handwritten: signature]

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

Appendix C

RELEVANT STATUTORY PROVISION
7 U.S.C. §136v(a)-(b)

(a) In general

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

(b) Uniformity

Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.