April 23, 2025

Scott S. Harris, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Laboratory Corporation of America v. Davis*, No. 24-304

Dear Mr. Harris:

I write to address two developments bearing on this Court's jurisdiction.

Yesterday, this Court addressed what to do when "the merits-stage briefing reveal[s] a serious, novel jurisdictional objection that may bar [this Court's] review" of the question presented. *Monsalvo Velazquez v. Bondi*, No. 23-929, at 1 (April 22, 2025) (Thomas, J, dissenting). Although the Court was able to decide the issue there, it was raised below, was fully briefed, and presented a clean legal question. Slip op. 7–8. Caution would be even more appropriate here. *See generally* Br. of Amicus Federal Jurisdiction Scholars.

One day earlier, Labcorp's reply clarified the scope of Labcorp's appeal in a way that has jurisdictional significance. Labcorp now effectively concedes (at 18–22) that the August class definition—the only definition that Labcorp challenged in its merits briefing below, its petition for certiorari, and its briefing to this Court—is not within this Court's certiorari jurisdiction under 28 U.S.C. § 1254. *Contra* Pet. Br. 7 (claiming that the August definition is "the only class before this Court"). Nor has Labcorp formally sought review of, or even directly challenged, the court of appeals' independent holding that it lacked appellate jurisdiction over the August class definition. JA399–400.

Labcorp's reply thus confirms how "serious" the jurisdictional hurdles are. *Monsalvo*, Dissent at 1. It acknowledges that this Court's jurisdiction extends only to the original May definition—a definition that is no longer in effect and that Labcorp did not challenge in its merits briefing below, its certiorari petition, or its brief in this Court. And in its Rule 23(f) petition, Labcorp affirmatively argued that the problem with this definition was that it was "defined to *include only those individuals who were injured* by the allegedly unlawful conduct," Rule 23(f) Pet. 2—the very rule Labcorp now says Article III demands.

Even after filing its Rule 23(f) petition, Labcorp continued to press the same arguments in the district court. *See* Dist. Ct. Dkt. 110, at 2–5. And it succeeded: It prompted the plaintiffs to seek modification and the court changed the definition to fix the problem Labcorp identified. *See* Pet. App. 51a, 53a. Having successfully argued that the problem

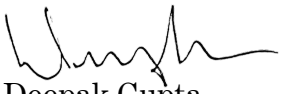
Gupta Wessler LLP
2001 K Street, NW, Suite 850 North
Washington, DC 20006
P 202 888 1741 F 202 888 7792
guptawessler.com

with the May definition was that it was defined to include only *injured* class members, Labcorp is now estopped from arguing the opposite—that the problem with that old definition is that it was defined to include *un*injured members. Reply 19 (citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001)). Although Labcorp's Rule 23(f) petition made an alternative argument (which Labcorp now relies on (at 20) as a reason a live controversy persists here), that argument objected to the *named plaintiff's* standing—and thus, if credited, would require that the named plaintiff's claim be dismissed. *See Monsalvo*, Dissent at 6 (citing *Frank v. Gaos*, 586 U.S. 485 (2019) (per curiam)).

In any event, Labcorp's arguments with respect to the May definition at least make clear that there is a material difference between the definitions—the relevant jurisdictional question under the circuits' "material questions" doctrine. *See Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1077 (7th Cir. 2014) (materiality hinges on "what the defendant wants to challenge"); *Wright v. City of Wilmington*, 677 F. App'x 95, 96 (3d Cir. 2017) (dismissing Rule 23(f) appeal as "improvidently granted" after original class definition was "superseded" in the district court). At a minimum, these threshold jurisdictional defects—undisclosed in the petition for certiorari and made apparent by the merits briefing—leave this Court with a profoundly flawed vehicle.

Before filing this letter, we confirmed with this office that this is the appropriate procedure under the circumstances. Shapiro et al., *Supreme Court Practice*, 19-27 (11th ed. 2019). We would appreciate it if you would circulate this letter to the Court.

Sincerely,



Deepak Gupta
Counsel for Respondents

Cc: Counsel of Record

Gupta Wessler LLP
2001 K Street, NW, Suite 850 North
Washington, DC 20006
P 202 888 1741 F 202 888 7792
guptawessler.com