No. 24-318

IN THE

Supreme Court of the United States

BASF CORPORATION,

Petitioner,

v.

BADER FARMS, INC.,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

BILLY R. RANDLES
BEVERLY T. RANDLES
ANGELA M. SPLITTGERBER
RANDLES SPLITTGERBER, LLP
174 Springridge Lane
Sunrise Beach, MO 65079

TRACEY F. GEORGE
Counsel of Record
DAVIS GEORGE LLC
1600 Genessee Street
Suite 328
Kansas City, MO 64102
(816) 569-2629
tracey@dgmlawyers.com

L. BENJAMIN MOOK
MOOK LAW FIRM
1600 Genessee St., 328
Kansas City, MO 64102

Attorneys for Respondent

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QUESTION PRESENTED

Whether this Court should grant review to classify the cross-appeal rule as either jurisdictional, mandatory, or a rule of practice, in this case where the cross-appeal rule is not implicated, and no classification of the rule would change the outcome.

RULE 29.6 STATEMENT

Bader Farms, Inc. has no parent company, and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages

CASES

RULES

INTRODUCTION

Bader Farms prevailed in a three-week jury trial against BASF Corporation and its co-conspirator, Monsanto Company, for massive damage caused to its peach orchards. In addition to compensatory damages, the judgment awarded Bader Farms joint and several punitive damages against BASF and Monsanto at the highest amount the district court held due process would allow. The judgment was a complete victory for Bader Farms.

That complete victory was diminished on BASF's and Monsanto's appeal, when the Eighth Circuit held the defendants could only be severally (not jointly) liable for punitive damages as co-conspirators, vacated the punitive damages award, and remanded for a new trial to separately assess punitive damages. *BASF Corp. v. Bader Farms, Inc.*, 20-3663 (July 7, 2022) ("*Bader I*").[1]

Despite reducing Bader Farms' rights under the judgment, the Eighth Circuit affirmed Bader Farms' entitlement to a punitive damages assessment against BASF in *Bader I*, and it did so again when Bader Farms appealed from the district court's failure on remand to hold a new trial to assess BASF's punitive damages. *Bader Farms, Inc. v. BASF Corp.*, 23-1134 (Apr. 30, 2024) ("*Bader II*"). This case is presently remanded to the district court awaiting this assessment.

In a last attempt to avoid punitive damages, BASF now petitions this Court to certify a question

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[1] Monsanto settled following remand.

never argued or decided below regarding the cross-appeal rule, which is not even implicated in this case.

This Court should deny *certiorari* for several reasons:

First, BASF presents a question neither pressed nor passed on by the Eighth Circuit below. The parties did not argue, nor did the Eighth Circuit decide, the issue of the cross-appeal rule's classification as jurisdictional, mandatory, or subject to exceptions. BASF did not take any issue with the rule's classification until its petition for rehearing *after Bader II*.

The Eighth Circuit also did not decide the cross-appeal rule's classification for good reason: in addition to BASF not raising the issue, the court held the cross-appeal rule is inapplicable in this case because its alterations to the judgment harmed appellee Bader Farms. BASF does not ask this Court to consider whether the Eighth Circuit erred in its conclusion the cross-appeal rule does not apply in the facts of this case, nor is that question fairly included in BASF's question presented. Consequently, any theoretical classification of that inapplicable rule would have no effect on this case's outcome and would be merely advisory.

Second, the question presented is not presented in this case because the decision below rests on an independent legal principle, cemented in two centuries of this Court's precedent—reflected in *United States v. American Ry. Express*, 265 U.S. 425 (1924), and continuing through *Jennings v. Stephens,* 574 U.S. 271 (2015)—that a cross-appeal is needed only to alter a judgment to benefit a nonappealing party. Here, the Eighth Circuit's judgment harmed, rather than benefited, appellee Bader Farms. The court vacated

the punitive damages award and remanded for a separate assessment—something BASF argued for, and Bader Farms argued against—leaving Bader Farms worse off than before the appeal. The court below correctly applied this Court's reasoning reflected in *American Railway* and *Jennings* to conclude the cross-appeal rule is inapplicable in these circumstances.

Third, no circuit conflict impacts this case. All circuits follow the *American Railway* rule. Even circuits that view the cross-appeal rule as jurisdictional agree that no cross appeal is required where, as here, the party that prevailed in the district court did not seek to alter the judgment.

STATEMENT

Beginning in 2015, BASF Corporation and Monsanto Company commercialized a crop system genetically modified to enable the mass spraying of a deadly herbicide called "dicamba." Dicamba is highly volatile and, when sprayed on soybeans and cotton during warm summer months, it volatilizes, travels off target, and destroys sensitive crops. Farmers whose crops are damaged by dicamba are often forced to switch to BASF and Monsanto's dicamba-tolerant system the next year to avoid additional crop damage.

Peach trees are highly sensitive to dicamba, but there is no dicamba-tolerant peach tree. Bader Farms' orchards are surrounded by soybean and cotton fields, which were rapidly converted to the Defendants' dicamba-tolerant system as off-target dicamba damage skyrocketed in Missouri's bootheel.

Until 2015 at least, Bader Farms was Missouri's largest peach producer, supplying seven states. After dicamba ravaged Bader Farms' orchards and crippled its production, Bader Farms sued BASF and Monsanto.

A. The District Court Verdict

Following a three-week trial, a jury awarded Bader Farms $15 million in compensatory damages. Pet. App. 26a. The jury concluded Bader Farms was damaged by Monsanto's and BASF's negligence and their acts in furtherance of their joint venture, and their conspiracy to develop and commercialize the dicamba-tolerant system with the expectation that off-target damage would increase sales of their dicamba-based products.

The jury also awarded $250 million in punitive damages based on Monsanto's acts in 2015-2016. Pet. App. 26a. The district court did not allow the jury to separately assess BASF's punitive damage liability because, in a pre-verdict opinion, it had held that BASF's individual conduct did not warrant separate imposition of punitive damages and, instead, that BASF's liability for damages would derive from its co-conspirator and joint venture liability. Pet. App. 65a. ("Verdict Form B was based on the Court's ruling that the jury's finding of joint venture or conspiracy would make the defendants jointly liable for any compensatory and punitive damages awards.").

Following post-trial motions, the district court reduced punitive damages to $60 million based on its due process review but otherwise upheld the jury's verdict. The Court then entered judgment against BASF and Monsanto, jointly and severally, for actual damages in the amount of $15 million and for puni-

tive damages in the amount of $60 million, plus post-judgment interest and costs. Pet. App. 61a-62a.

B. The Eighth Circuit's *Bader I* Decision

BASF and Monsanto appealed, arguing that Bader Farms failed to prove causation and compensatory damages, and that punitive damages were unwarranted and excessive. Pet. App. 26a. BASF argued that "it did not participate in a joint venture or conspiracy with Monsanto, and that punitive damages should have been separately assessed." *Id.* 26a-27a.

The Eighth Circuit affirmed the judgment as to causation and compensatory damages. *Id.* at 27a-34a, 34a-38a. The court also ruled that Bader Farms had established by clear and convincing evidence that Monsanto and BASF acted with reckless indifference, supporting an award of punitive damages. *Id.* at 50a. Finding that they acted as co-conspirators, the court held that BASF and Monsanto were severally (not jointly) liable for punitive damages under Missouri law, *id.* at 53a, and that, because the evidence established different degrees of culpability of each, the district court should have instructed the jury to separately assess punitive damages against Monsanto and BASF, *id.* at 54a. In so holding, the court agreed with BASF and disagreed with Bader Farms that BASF did not waive its right to a separate punitive damages assessment. *Id.* at 54a-55a.

Consistent with these rulings, the court vacated the punitive damages award and remanded the case with instructions to hold a new, single-issue trial to assess punitive damages against Monsanto and BASF separately. *Id.* The court of appeals affirmed the judgment in all other respects. *Id.* at 56a.

BASF filed a petition for rehearing, but it did not mention the cross-appeal rule, much less argue that the decision violated that rule. The Eighth Circuit denied the petition.

C. Proceedings On Remand

Shortly following remand, Monsanto and Bader Farms settled. Pet. App. 3a.

The district court then declined to hold a new trial to assess BASF's punitive damages. Instead, the district court restated its pre-appeal ruling "that BASF's individual conduct in 2015 and 2016 did not warrant a separate imposition of punitive damage against BASF." *Id.* at 3a, 19a. In so doing, the court dismissed as *dicta* the Eighth Circuit's holdings that Bader Farms made a submissible case for punitive damages against both Monsanto and BASF, and that BASF could be individually liable for punitive damages as a co-conspirator. *Id.* at 18a-19a.

The district court dismissed Bader Farms' remaining punitive damages claim against BASF with prejudice. *Id.* at 21a.

D. The Eighth Circuit's *Bader II* Decision

Bader Farms appealed, arguing the district court erred in (1) refusing to follow the court of appeals' instruction to hold a new trial to separately assess punitive damages against BASF as a co-conspirator, and (2) ignoring the court of appeals' holding that BASF can be individually assessed punitive damages for its acts in furtherance of the conspiracy. Pet. App. 3a.

Ruling for Bader Farms, the Eighth Circuit first rejected BASF's argument that the district court's

ruling was required by the law of the case doctrine. BASF's petition does not raise that issue.

In addition, the Eighth Circuit rejected BASF's argument based on the cross-appeal rule. BASF argued that *Bader I*, by ordering a new trial to separately assess BASF's punitive damages as a co-conspirator, conferred an improper benefit on the appellee in that appeal, Bader Farms. The *Bader II* court noted that under the "longstanding" cross-appeal rule "an appellate court may not alter a judgment to benefit a nonappealing party." *Id.* However, the court explained, "federal appellate courts, do[] not review lower court's opinions, but their *judgments*." *Id.* (citing *Jennings v. Stephens*, 574, U.S. 271, 277 (2015)). And *Bader I*'s alterations to the judgment were not to Bader Farms' benefit, but to its detriment: The decision "altered the judgment by vacating the award of punitive damages, changing the defendants' theory of liability for punitive damages, and remanding for a new trial to re-determine punitive damages." Pet. App. 10a. As the court observed, "[e]ach alteration left Bader Farms in a worse position." *Id.*

Neither of the parties argued, and the Eighth Circuit did not address, whether the cross-appeal rule was jurisdictional, a mandatory claims processing rule, or a rule applied in the court's discretion.

BASF filed a petition for rehearing in which it argued, for the first time, that the Eighth Circuit should address the nature of the cross-appeal rule. The petition was denied.

REASONS FOR DENYING THE WRIT

I. BASF's Question Presented Was Not Raised Below, And The Answer Has No Effect On The Outcome Of This Case.

This Court is "a court of review, not of first view." *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37–38 (2012); *see Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 770 (2011) ("Finding no 'exceptional' circumstances in this case, we follow our usual course and refuse to consider the issue.") (citing *Youakim v. Miller,* 425 U.S. 231, 234 (1976)) (*per curiam*).

The Eighth Circuit, however, did not determine the jurisdictional status of the cross-appeal rule below because no party raised the issue. To address that issue in this case, then, this Court would be addressing an issue that was neither argued nor decided below. In fact, BASF's petition for rehearing of *Bader I* did not mention the cross-appeal rule at all. *See* BASF Pet. for Reh'g by Panel, at 7 (Aug. 4, 2022) (arguing that "[t]he panel overlooked the law-of-the-case doctrine when it concluded that 'Bader Farms provided clear and convincing evidence that Monsanto *and* BASF acted with reckless indifference."). And its briefing to the panel in *Bader II* did not mention a jurisdictional flaw. It raised the jurisdictional point for first time in its petition for rehearing following the second appeal.

The reason that the jurisdictional status of the cross-appeal rule was not argued and decided below is straightforward: it is not implicated in this case because the cross-appeal rule itself is not implicated in this case, as the Eighth Circuit held. Pet. App. 10a ("Each alteration [to the judgment] left Bader

Farms in a worse position…The cross-appeal rule is inapplicable here."). Thus, were this Court to grant the petition, then, to ensure that this Court was not offering an advisory opinion that would have no effect on this case, the Court would first have to consider the case-specific question whether the court of appeals erred in holding that this case does not implicate the cross-appeal rule.

Importantly, though, BASF does not ask the Court to consider the issue whether the court below erred in holding that the cross-appeal rule does not apply on the facts of this case. And that issue is not fairly encompassed in the question presented by BASF. The question is thus not before the Court. *See* S. Ct. R. 14.1(a) ("Only the questions set forth in the petition, or fairly included therein, will be considered by the Court.").

II. As The Court Below Held, The Cross-Appeal Rule Is Not Pertinent To This Case.

A. This case does not implicate the question on which BASF seeks review. Rather, as the Eighth Circuit held, the cross-appeal rule played no role in this case.

Cross appeals are necessary when the appellee seeks to enlarge his rights or lessen his adversary's rights under the judgment. *United States v. American Ry. Exp. Co.*, 265 U.S. 425, 435 (1924). "Under that unwritten but longstanding rule, an appellate court may not alter a judgment to benefit a nonappealing party." *Greenlaw v. United States*, 554 U.S. 237, 244 (2008).

As the Court explained in *Jennings v. Stephens,* 574 U.S. 271, 276 (2015), the inquiry whether the appellee seeks to enlarge his rights looks to the dis-

trict court's *judgment*, not the interlocutory opinions on which the judgment rests. *Id.* at 281-82; *see id.* at 277 ("federal appellate courts, do[] not review lower courts' opinions, but their *judgments*" (citation omitted)). Moreover, an appellee who does not cross appeal may still "urge in support of a decree any matter appearing in the record, although his argument may involve an attack upon the reasoning of the lower court." *Id.* at 276. If the appellee seeks only to affirm the relief pronounced in the judgment below, no cross appeal is required. *Id.* at 282.

Here, in *Bader I*, Bader Farms did not seek to alter the judgment in any respect. BASF, however, argued that it was entitled to an individual assessment of punitive damages (Pet. App. at 27a, 51a)—and that is what it got. The Eighth Circuit "altered the judgment by vacating the award of punitive damages, changing the defendants' theory of liability for punitive damages, and remanding for a new trial to re-determine punitive damages." *Id.* at 10a. "Each alteration left Bader Farms in a worse position" than before BASF's appeal. *Id.* Therefore, as the court explained in *Bader II*, the "cross-appeal rule is inapplicable" in this case. *Id.*

B. The decision below is correct. The Eighth Circuit's conclusion that the cross-appeal rule is inapplicable in this case follows directly from this Court's discussion of the cross-appeal rule in *American Railway* and *Jennings*.

BASF does not identify any error in the court's determination that the ruling in *Bader I* "was not to the benefit of Bader Farms but to its detriment." Pet. App. 9a. As the court explained in *Bader II*, vacating the judgment's joint and several punitive damages

award, concluding BASF can only be severally (not jointly) liable, and sending the case back to redetermine punitive damages plainly did not benefit, but rather harmed, Bader Farms.

BASF argues, however, that even if the *Bader I* decision was to the detriment of Bader Farms, a cross appeal was required because the decision harmed BASF. But each of the alterations to the judgment (not interlocutory rulings) benefited BASF: BASF is now free of joint responsibility for Monsanto's punitive damage liability, and it can now argue to a new jury that it should be subject to no punitive damages award at all. Indeed, BASF got exactly what it argued for and Bader Farms argued against: an individualized assessment of its punitive damages. Pet. App. 26a-27a ("BASF adds … that punitive damages should have been separately assessed."); *id.* at 54a–55a. BASF's preference for a total exoneration does not mean it was harmed by the relief it received.

Moreover, BASF's suggestion that Bader Farms benefited when the Eighth Circuit "decided it could vacate the district court's unappealed individual-liability ruling" (Pet. 34) is both factually and legally wrong. The Eighth Circuit in *Bader I* reviewed the district court's *judgment*, not its interlocutory *ruling*, and it vacated the judgment's punitive damages award. *See Jennings*, 574 U.S. at 277 (stating that appellate courts review judgments, not opinions).

At bottom, the Eighth Circuit in *Bader I* altered the judgment to Bader Farms' detriment (and BASF's benefit). Thus, the Eighth Circuit in *Bader II* correctly held the cross-appeal rule does not apply. This is not an exception to the rule: it is the rule.

III. This Case Does Not Implicate A Circuit Split.

The circuit courts agree that no cross appeal is required to alter the judgment to the detriment of the nonappealing party. The courts of appeal uniformly follow this Court's precedent in *Jennings* and *American Railway*.

A. BASF argues that some courts view the cross-appeal rule as jurisdictional, while others do not. None, however, would require a cross appeal in the circumstances presented here. Take, for example, the Fifth Circuit's decision in *Cooper Indus., Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 876 F.3d 119 (5th Cir. 2017). There, National Union obtained a judgment in its favor but nonetheless filed a cross-appeal because it disagreed with some of the district court's reasoning. *Id.* at 126. Adhering to the settled rule that "[a]ppellate courts review judgments, not opinions," the Fifth Circuit held National Union "conflat[es] the district court's opinion (i.e. the order) with its judgment." *Id.* (citing *Jennings*, 574 U.S. at 277). The Fifth Circuit ruled there "was nothing unfavorable to National Union" in that judgment "such that it might need to protect its rights—just some adverse reasoning. The *judgment* is a total victory for National Union." *Id.* at 126-127 (emphasis in original). Thus, while noting that judgments may be properly supported on alternative grounds rejected by the district court, the Fifth Circuit dismissed the cross-appeal. *Id.* The Court held that a cross-appeal (including a so-called "conditional" or "protective" cross-appeal) was not required, and was, rather, "worse than unnecessary, because it disrupts the briefing schedule, increases the number (and usually the length) of briefs, and

tends to confuse the issues." *Id.* (citations and internal quotation marks omitted).

Likewise, the First, Second, Fourth and Tenth Circuits, which BASF contends also view the cross-appeal rule as jurisdictional, would not require a cross-appeal here. *See, e.g., Neverson v. Farquharson,* 366 F.3d 32, 39 (1st Cir. 2004) (holding that cross-appeal by prevailing party is not required – and "would have been improper" – where prevailing party does not seek to alter final judgment to enlarge its rights or "diminish the appealing party's rights thereunder.") (citations and internal quotation marks omitted); *SEC v. Ahmed*, 72 F.4th 379, 399 (2d Cir. 2023) ("[T]he cross-appeal rule is inapplicable to [this] case because the SEC did not seek to 'enlarge its rights under the judgment' *** *i.e.*, the outcome that the cross-appeal rule forbids.") (citations omitted); *Harriman v. Associated Indus. Ins. Co., Inc.,* 91 F.4th 724, 727-728 (4th Cir. 2024) (dismissing cross-appeal, holding: "True, the district court did not accept every argument Associated made and ruled against it on some matters. But appellate courts review 'judgments, not statements in opinions,' and the judgment we review here [is in Associated's favor]. Associated could not have appealed that judgment because it was not adversely affected by that judgment in any way. [But] Associated [is] entitled to defend its victory on any basis supported by the record, even if some of its arguments 'involve an attack upon the reasoning of the lower court.'") (cleaned up) (quoting *Am. Ry. Express*, 265 U.S. at 435) (other citations omitted); *Crow Tribe of Indians v. Repsis*, 74 F.4th 1208, 1217 (10th Cir. 2023) (no cross-appeal required because Wyoming "merely attacks one component of the district court's *rationale*, as an alterna-

tive ground to affirm the district court's ruling; if successful, it would neither 'enlarg[e] [its] own rights' nor 'lessen[ ] the rights of [the Tribe].'") (quoting *Am. Ry. Express*, 265 U.S. at 435) (emphasis in original).

The same holds true in circuits BASF cites as treating the cross-appeal rule as either a mandatory claims-processing rule (*i.e.* Sixth, Eleventh, and Federal) or a flexible rule of practice (*i.e.* Third, Seventh, Eighth, Ninth, and D.C.). *See, e.g., McMunn v. Babcock & Wilcox Power Generation Grp., Inc.,* 869 F.3d 246, 259–60 (3d Cir. 2017) (dismissing prevailing party's cross-appeal as "'superfluous'" because "'a party, without taking a cross-appeal, may urge in support of [a judgment] from which an appeal has been taken any matter appearing in the record.'") (quoting *Smith v. Johnson & Johnson*, 593 F.3d 280, 283, n. 1 (3d Cir. 2010), citing *Am. Ry. Express,* 265 U.S. at 435) (other citations omitted); *Autumn Wind Lending, LLC v. Est. of Siegel by & through Cecelia Fin. Mgmt., LLC*, 92 F.4th 630, 638 (6th Cir. 2024) (judgment may be affirmed on alternative grounds, and the "Defendants do not ask us to provide relief beyond the district court's determination, so a cross-notice of appeal is not required here.") (citing *Jennings,* 574 U.S. at 276, quoting *Am. Ry. Exp. Co.*, 265 U.S. at 435); *E.T. Prod., LLC v. D.E. Miller Holdings, Inc.*, 872 F.3d 464, 468, n.1 (7th Cir. 2017) (holding "[a] cross-appeal was unnecessary because the [appellees] do not seek to alter the district court's judgment," and the "'judgment is not the court's opinion or reasoning; it is the court's bottom line.'") (quoting *Wellpoint, Inc. v. Comm'r*, 599 F.3d 641, 650-651 (7th Cir. 2010)); *Doe v. Univ. of St. Thomas*, 972 F.3d 1014, 1017, n.2 (8th Cir. 2020) (cross-appeal not required because appellate courts "review a district

court's judgments, not its opinions," judgment may be defended "on any ground consistent with the record, even if rejected or ignored in the lower court," and appellee's argument "does not enlarge its rights or lessen Doe's.") (citing *Jennings*, 574 U.S. at 276-277) (other citation and internal quotation marks omitted); *Corbello v. Valli*, 974 F.3d 965, 975, n.3 (9th Cir. 2020) (holding no cross-appeal required because "[o]ur decision will neither enlarge Defendants' rights nor lessen Corbello's," and "any matter appearing in the record" may be urged to support a judgment, even if it "involve[s] an attack upon the reasoning of the lower court.") (quoting *Jennings,* 574 U.S. at 276, quoting *Am. Ry. Express Co.,* 265 U.S. at 435); *Lopez v. U.S. Att'y Gen.,* 914 F.3d 1292, 1299–300 (11th Cir. 2019) (cross-appeal not required where appellee does not seek to enlarge its rights nor lessen appellant's rights under the judgment) (citing *Jennings*, 574 U.S. at 276-277); *Singh v. George Washington Univ. Sch. of Med. & Health Scis.,* 508 F.3d 1097, 1099–100 (D.C. Cir. 2007) (no cross-appeal required of prevailing party where arguments supported the judgment on other grounds and would not enlarge appellee's rights or lessen its adversary's under the judgment) (citations omitted); *G. David Jang, M.D. v. Bos. Sci. Corp.,* 872 F.3d 1275, 1290 (Fed. Cir. 2017) ("We dismiss the cross-appeal because it does not seek to enlarge the district court's judgment of non-infringement in its favor. Instead, the cross-appeal merely offers an alternative basis to affirm the judgment," and "we may nonetheless consider the arguments raised as alternative grounds for sustaining the judgment.") (citations omitted).

All Circuits agree no cross appeal is required here. The judgment was a total victory for Bader

Farms: full joint and several punitive damages against BASF at the highest amount the district court held due process allows. Bader Farms could not improve on that judgment. The Eighth Circuit's alterations to the judgment harmed—rather than benefited—Bader Farms. Not one federal circuit would require a cross appeal in these circumstances. There is no split relevant to this case.

B. This Court has described the cross-appeal rule as "inveterate and certain." *Morley Constr. Co. v. Maryland Casualty Co.*, 300 U.S. 185, 191 (1937); *Greenlaw*, 554 U.S. at 245; *Jennings*, 574 U.S. at 276. At the same time, the Court has repeatedly declined to further qualify the rule as either jurisdictional, mandatory, or a rule of practice. *See Greenlaw*, 554 U.S. at 245 (stating "we again need not type the rule 'jurisdictional' in order to decide this case"); In *El Paso Natural Gas Co. v. Neztsosie*, 526 U.S. 473, 480 (1999).

The cases cited by BASF do not reflect any difficulty applying the rule. And BASF concedes that the difference between a jurisdictional and mandatory label, in application, "is close enough to make no difference." Pet. 32.

Moreover, the circuits that BASF cites as applying a flexible cross-appeal rule, Pet. 22, nonetheless require a cross appeal to alter the judgment to benefit a nonappealing party. *See, e.g., Bacon v. Avis Budget Grp., Inc.*, 959 F.3d 590, 604, n.9 (3d Cir. 2020) ("Plaintiffs' argument seeks to attack a judicial decree 'with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary.' Such an attack can only be pursued in a cross appeal." (quoting *Jennings*, 574 U.S. 271 (2015) (cita-

tion omitted)); *Cooper v. Retrieval-Masters Creditors Bureau, Inc.*, 42 F.4th 675, 682, n.1 (7th Cir. 2022) ("Defendant's effort to vacate the entire fee award faces another obstacle. Defendant did not file a cross-appeal. The longstanding rule requiring a cross-appeal would prevent us from modifying a judgment in favor of an appellee who did not file its own cross-appeal." (citing *Greenlaw,* 554 U.S. 237 (2008)); *Union Pac. R.R. Co. v. Int'l Ass'n of Sheet Metal, Air, Rail, & Transp. Workers, (SMART)-Transportation Div.,* 988 F.3d 1014, 1019, n. 3 (8th Cir. 2021) (relying on *Greenlaw* and rejecting argument to "reverse the district court and award" additional back pay, holding "Because SMART did not cross-appeal, this argument—one urging us to alter the district court's judgment to enlarge SMART's rights—is not properly before us."); *S. Calif. Edison Co. v. Orange Cnty. Transp. Auth.*, 96 F.4th 1099, 1110-11 (9th Cir. 2024) ("More importantly for our purposes, OCTA has not cross-appealed the denial of pre-judgment interest, and we 'may not alter a judgment to benefit a nonappealing party.'" (citing *Lopez v. Garland*, 60 F.4th 1208, 1212 (9th Cir. 2023) (quoting *Greenlaw,* 554 U.S. 237 (2008))); *Freeman v. B & B Assocs.*, 790 F.2d 145, 151 (D.C. Cir. 1986) (relying on *American Railway* and holding because appellee's argument "would necessarily enlarge the relief, we may not and should not consider it" absent a cross-appeal (citation and internal quotation marks omitted)).

In short, any conflict over the theoretical status of the rule is overstated and, in any event, not relevant in this case. In any circuit, a cross appeal was not required to support the decision in *Bader I* because the decision did not benefit Bader Farms. If this Court deems it important to further define the cross-appeal

rule, it should await a case in which the cross-appeal rule is implicated, and its application has some effect on the outcome. That is not this case.

CONCLUSION

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

Respectfully submitted,

BILLY R. RANDLES
BEVERLY T. RANDLES
ANGELA M. SPLITTGERBER
RANDLES SPLITTGERBER
174 Springridge Lane
Sunrise Beach, MO 65079

TRACEY F. GEORGE
Counsel of Record
DAVIS GEORGE LLC
1600 Genessee Street
Suite 328
Kansas City, MO 64102
(816) 569-2629
tracey@dgmlawyers.com

L. BENJAMIN MOOK
MOOK LAW FIRM
1600 Genessee St., 328
Kansas City, MO 64102

Attorneys for Respondent

December 2024