No. 24-933

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

v.

FAYSAL A. JAMA, JAMES KELLEY, and ANYSA NGETHPHARAT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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RENEWED RULE 29.6 STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

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REPLY BRIEF FOR PETITIONERS

The Ninth Circuit, in one of scores of similar actions nationwide, held that so long as an insurer's method of valuing totaled vehicles is "impermissible," that's enough to greenlight class certification—no matter whether class members were underpaid. As the dissenting judge recognized, that approach conflicts with that of the Fifth Circuit, where plaintiffs must prove that a challenged valuation method actually caused each class member to receive less than fair market value for his vehicle. It also contravenes decisions from the Seventh and Eighth Circuits and this Court.

Respondents offer no good reason to deny review. Their refrain is that State Farm hasn't disputed on appeal that the valuation method at issue—which adjusts advertised prices for vehicles at dealerships that haggle to better reflect fair market value—is "'impermissible'" under state law. Opp. 2. State Farm doesn't concede that negotiation adjustments are unlawful, but that's beside the point. The issue below and here is whether unlawfulness alone is enough to prove that all class members "'received less than they were owed.'" *Id.* at 11. That's a real-world question requiring real-world evidence—yet respondents assume it away by equating unlawfulness with injury. That approach wouldn't fly elsewhere, but in the Ninth Circuit it resulted in a certified class filled with untold numbers of people who didn't suffer any actual harm.

Respondents then say the record lacks evidence that specific class members received payouts equal to or greater than their vehicles' fair market value. But the record here, as in similar cases, leaves no doubt that dealer negotiations are commonplace and that

valuations adjusting for negotiation will often equal or exceed valuations from other permissible methods. Plus, respondents' argument is self-defeating: they bore the burden to present evidence of actual, concrete harm, yet they consistently litigated this case based on the theory that real-world valuation evidence was unnecessary. The purely legal nature of respondents' theory makes this case a *better* candidate for review.

The decision below also violates Article III. A mere "injury in law" like the one respondents assert "is not an injury in fact.". *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 427 (2021). Yet the Ninth Circuit—applying its especially forgiving approach to Article III standing at class certification—certified a class loaded with uninjured members on the theory that questions of injury could be addressed down the line (if ever). This Court will address that approach in *Laboratory Corp. of America* v. *Davis* (No. 24-304), so it should at least hold the petition for *Labcorp*.

I. THE RECOGNIZED SPLIT WARRANTS RESOLUTION.

A.1. Missing from respondents' account is Judge Rawlinson's recognition that the majority's decision "creates an unnecessary circuit split" with the Fifth Circuit. Pet. App. 29a (dissent); accord *id.* at 33a-34a.

Judge Rawlinson was right. Respondents argue that if any adjustment is "'unlawful,'" each class member is automatically injured in the amount of that adjustment. E.g., Opp. 2. That's the theory the Ninth Circuit accepted. Pet. App. 17a-19a. But the Fifth Circuit holds that even where plaintiffs "show that an insurer's use of [a valuation method] was unlawful," they still must "prove an actual underpayment" to each class member. *Sampson* v. *USAA*, 83 F.4th 414,

422-23 (5th Cir. 2023); accord *Bourque* v. *State Farm Mut. Auto. Ins. Co.*, 89 F.4th 525, 528-29 (5th Cir. 2023). There is no way to reconcile those approaches.

Following the majority's lead, see Pet. App. 19a n.5, respondents try to distinguish *Sampson* and *Bourque* as addressing different state laws. But the cases are identical in every relevant way:

- The Fifth Circuit cases involved a statute recognizing various methods insurers can use to value totaled vehicles, from a "fair market value survey" to a "qualified expert appraiser" to "a generally recognized * * * source." La. Stat. Ann. § 22:1892(B)(5). This case similarly involves a regulation recognizing various permissible methods, from "[l]icensed dealer quotes" to "appraisal" to the "actual cash value of a comparable motor vehicle." Wash. Admin. Code § 284-30-391(2)-(3).

- In each case, the plaintiffs claimed the insurer's method was unlawful: because the valuation report was "'not a generally recognized used motor vehicle source,'" e.g., *Sampson*, 83 F.4th at 417, or because the report adjusted for negotiation rather than "options, mileage or condition," Pet. App. 17a (quoting Wash. Admin. Code § 284-30-391(4)(b)).

- And in each case, the plaintiffs sought to establish injury and damages by comparing the method the insurer used to a supposedly lawful method. In the Fifth Circuit, the plaintiffs relied on values from the NADA guidebook. E.g., *Sampson*, 83 F.4th at 416-17. Here, respondents rely on altered versions of the Autosource

> reports, excluding negotiation adjustments. Pet. App. 19a.

The *only* difference across these cases is the reasoning. The Fifth Circuit held that the plaintiffs' fixation on one valuation method was "arbitrary," *Sampson*, 83 F.4th at 422-23, and could not supplant individualized evidence of each vehicle's fair market value from "'equally legal and legitimate alternative[]'" methods, *Bourque*, 89 F.4th at 528-29. But the Ninth Circuit approved just that sort of shortcut. By treating respondents' contrived value—which assumes that advertised prices always represent fair market value and that no car dealers negotiate—as the *only* measure of actual cash value, the Ninth Circuit approved class certification without the showing of real-world underpayment that the Fifth Circuit has required.

Nothing respondents say undercuts that conflict. They assert (at 18) that a different rule would apply "where multiple possible valuations exist." But that's *this* case: Washington regulations broadly define "[a]ctual cash value" as "fair market value," Wash. Admin. Code § 284-30-320(1), and give insurers a variety of distinct methods they can use to value totaled vehicles, *id.* § 284-30-391(2). Nothing in the regulations respondents invoke limits potential evidence of fair market value to any one method. And while respondents recognize (at 18) insurers' "'due process right to argue, for each individual [class member], that damages should be determined by a different legally permissible method,'" they never explain why State Farm should be deprived of that right here.

2. The decision below also conflicts with decisions of the Seventh and Eighth Circuits in cases involving

other insurance valuation disputes. The Seventh Circuit has held that no matter the method used, "[i]f a given policyholder was fully compensated for the [covered] damage," the insurer has fulfilled its promise "to compensate the insured." *Kartman* v. *State Farm Mut. Auto. Ins. Co.*, 634 F.3d 883, 889-91 (7th Cir. 2011). And that has consequences, because "the class-action device is not appropriate for resolving * * * highly individualized questions of fact" about whether each class member was underpaid. *Id.* at 891. The Eighth Circuit, too, has recognized that claims of an unlawful valuation method aren't enough to justify class certification because actual injury "may only be determined based on all the facts surrounding a particular insured's * * * loss." *In re State Farm Fire & Cas. Co.* (*LaBrier*), 872 F.3d 567, 576-77 (8th Cir. 2017); accord, e.g., *Halvorson* v. *Auto-Owners Ins. Co.*, 718 F.3d 773, 779-80 (8th Cir. 2013).

Respondents' efforts to distinguish these cases are half-hearted. *Halvorson* goes unmentioned. *Kartman*, they say, is different because there's no single standard insurers must use in "'assessing hail damage.'" Opp. 23. But again, Washington law gives insurers *many* distinct options for valuing totaled vehicles. *Supra* at 2-4. And for *LaBrier*, respondents repeat the illusory no-single-method distinction before speculating that the Eighth Circuit might have reached a different result had it considered an intermediate appellate decision from Missouri "rejecting [the] use of depreciation to value labor cost." Opp. 23-24 & n.3.

If anything, respondents' attempt to rewrite *LaBrier* confirms that the Ninth Circuit's view "permit[s] certification based on nothing more than an alleged legal violation." Pet. 10. Deem a method "impermissible,"

et voilà: certification is assured. That approach to class adjudication, which is meant to be "'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only,'" should give this Court pause, not comfort. *Am. Express Co.* v. *Italian Colors Rest.*, 570 U.S. 228, 234 (2013).

3. Respondents have especially little to say about this Court's decisions. This Court has demanded a strict assessment of "the elements of the underlying cause of action." *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U.S. 804, 809-10 (2011). But respondents mention neither that principle nor the elements of their claims, which require proof of an actual injury caused by asserted violations of regulations "'incorporated into'" their policies. Pet. 18-19. This Court has also required proof as a matter of "*fact*" that Rule 23's standards have been met before any class is certified. *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 350-51 (2011). Yet respondents defend certification by insisting (at 7), without any real-world evidence, that "*100%*" of class members suffered an injury. And respondents have nothing to say about this Court's caution that a class can't be certified "on the premise that [the defendant] will not be entitled to litigate" whatever defenses it has "to individual claims." *Dukes*, 564 U.S. at 367 (citing 28 U.S.C. § 2072(b)).

B. Respondents also have no answer to the importance of the issues here.

Federal courts are facing a raft of total-loss cases involving millions of putative class members and billions in asserted damages. Pet. 25-27. And that's just total-loss cases. The issues here matter in virtually every class action challenging an insurer's method of

valuing insured assets. *Id.* at 28-29. The Ninth Circuit's decision "provides a roadmap for class certification in essentially every single case" of that sort. U.S. Chamber Br. 18-19. Allowing the decision below to stand will lead to more and more class actions in the Ninth Circuit that, once certified, will "increase [defendants'] potential damages liability and litigation costs" so much that they will have little choice but "to settle and to abandon a[ny] meritorious defense." *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 476 (1978).

What little respondents say about importance is misguided. This case isn't limited to "the Autosource system," Opp. 26, just as a dispute about the TCPA isn't confined to the particular communication system claimed to be an "autodialer," *Facebook, Inc.* v. *Duguid*, 592 U.S. 395, 401-02 (2021). Nor is this case limited "to Washington," Opp. 26; insurance disputes over totaled vehicles are pending in over 40 states, and whenever it suits them, respondents are content to sweep in cases involving different valuation reports used by different insurers in different states, *id.* at 19-20. And the issues reverberate beyond total-loss cases to an array of lawsuits brought to force companies into *in terrorem* settlements. Pet. 28-30.

C. Respondents also contend (at 26) that this isn't the right case to address these issues because the district court supposedly read Washington law to require the result below. That's wrong on multiple levels.

The sleight of hand respondents employ is the idea that any unlawful downward adjustment means all class members "received less than they were owed." Opp. 11 (quoting Pet. App. 18a-19a). But the only thing policyholders were "owed" was the "actual cash value" of their vehicles. Pet. App. 5a. You'd never know it

from reading respondents' brief, but the regulations they invoke specifically define "[a]ctual cash value" as "the fair market value of the loss vehicle immediately prior to the loss." Wash. Admin. Code § 284-30-320(1). Determining what each class member was owed, then, requires a fact-intensive assessment of the price "an informed buyer would willingly pay and an informed seller would accept" for each vehicle shortly before it was totaled. *DePhelps* v. *Safeco Ins. Co. of Am.*, 65 P.3d 1234, 1240 (Wash. Ct. App. 2003).

It doesn't help respondents that Washington regulations "prescribe[] permissible methodologies" for valuing totaled vehicles. Opp. 18. Nothing in the regulations limits insurers to any single method. Insurers instead are directed to "determine the actual cash value of the loss vehicle by using *any one or more* of the [specified] methods." Wash. Admin. Code § 284-30-391(2)(b) (emphasis added). The regulations further recognize that an initial valuation won't be the end of the matter by giving both sides the right to seek appraisal in the event of disagreement. *Id.* § 284-30-391(3). Even the Ninth Circuit acknowledged that the Autosource reports respondents want to use (minus negotiation adjustments) represent "*one* proper measure of actual cash value." Pet. App. 26a (emphasis added). So there's no basis to suppress State Farm's right to present alternative valuation testimony affecting each class member's entitlement to relief. Pet. 21.

Nor, contrary to respondents' insistence (at 29-30), does the motion-to-dismiss order pose any obstacle to review. In that order, the district court rejected State Farm's argument that negotiation adjustments are lawful in Washington. Opp. App. 12a-13a. That's

it. The court never endorsed the notion that an insurer would be forever bound to one method, to the exclusion of other relevant evidence of each car's fair market value.

Respondents' repeated emphasis that the motion-to-dismiss ruling was "*unchallenged*," Opp. 11; accord *id.* at 2, 10, 26, 30, thus misses the point. The question here is whether respondents *also* must prove their cars were actually undervalued as a result of any asserted violations. That's the important, far-reaching question over which the courts of appeals are split.

Respondents also miss the mark when they fault State Farm for supposedly not presenting proof that particular class members were underpaid. Opp. 15. It was respondents' burden to produce evidence of actual injury for purposes of class certification, *Dukes*, 564 U.S. at 350-51, and summary judgment, *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Yet respondents made a tactical choice *not* to present individualized valuation evidence, and to instead litigate this case on the theory that no such evidence was required. Pet. App. 44a (respondents "have never intended to show that they received less than [actual cash value]"). So even if evidence of actual injury were lacking here, that couldn't support the decision below—and respondents would only have themselves to blame.

This case presents the question in an ideal, purely legal form. If the Ninth Circuit is right, respondents needn't engage in individualized valuation exercises and are entitled to class certification. If the Fifth, Seventh, and Eighth Circuits are right, respondents haven't offered any classwide way to prove each class

member was underpaid and are not entitled to certification. Either way, the question presented dictates the propriety of class certification, in this case and many others pending nationwide.

II. THE PETITION SHOULD AT LEAST BE HELD FOR *LABCORP*.

This case also presents the question whether a Rule 23(b)(3) class can be certified when class members lack Article III injury. See *Lab'y Corp. of Am.* v. *Davis*, — S. Ct. —, 2025 WL 288305 (Jan. 24, 2025). This case is review-worthy on that basis alone and, at minimum, should be held pending *Labcorp*.

Respondents insist (at 15) that State Farm "has not even identified how *theoretically*" class members could be uninjured when their cars were valued using a negotiation adjustment. That's fanciful. The advertised price for a comparable vehicle at a dealership that negotiates on price is inflated, so a modest adjustment for typical negotiation will often leave the valuation at or above the totaled vehicle's fair market value. Common experience and record evidence alike confirm that dealers' negotiating on price is anything but hypothetical. E.g., C.A. SER-187-88 (data from "millions of transactions over time"). Unsurprisingly, then, the case law supplies numerous examples of valuations based on negotiation adjustments that gave class members more than other permissible valuation methods would have produced.[†] So there's no doubt

[†] E.g., *Ambrosio* v. *Progressive Preferred Ins. Co.*, No. 2:22-cv-342, Dkt. 65 at 1 (D. Ariz. Nov. 17, 2023) (report with negotiation adjustment valued vehicle at $400 more than owner paid months earlier); *ibid.* (valuation with negotiation adjustment was $600 more than NADA value); *Brown* v. *Progressive Mountain Ins.*

the class here sweeps in members who were uninjured because, adjustment notwithstanding, they received as much as or more than their vehicles were worth. And again, respondents' argument only shows that they secured certification without evidence showing that all or even most class members suffered any real-world injury.

Ultimately, respondents' defense on Article III is less factual and more theoretical. Because every class member was paid "based on an Autosource report * * * with a typical negotiation deduction," they say, "there are no uninjured individuals." Opp. 28-29. But the Third Circuit rejected that argument as "impermissibly divorc[ing] [Article III] standing to sue from any real-world financial injury." *Lewis* v. *GEICO*, 98 F.4th 452, 460 (3d Cir. 2024).

Try as respondents might (at 21-22), there's no harmonizing *Lewis* and the decision below. If it were enough for Article III to say that a challenged deduction should have "be[en] ZERO," *id.* at 26, the adjustment in *Lewis* would have produced an Article III injury no matter what followed. But the Third Circuit declined to "treat the [challenged] adjustment alone as a harm" and instead assessed whether the plaintiffs "ultimately avoided any financial injury." *Lewis*, 98 F.4th at 460. As the Third Circuit rightly held, "a bare violation of [state] insurance rules, *** divorced from any concrete harm, do[es] not suffice for Article III standing." *Id.* at 461 (cleaned up) (quoting *TransUnion*, 594 U.S. at 440).

Co., No. 3:21-cv-175, Dkt. 147 at 29 of 276 (N.D. Ga. Mar. 15, 2024) (valuation with condition and negotiation adjustments was $2,200 more than Kelley Blue Book value).

This case would be a useful companion to *Labcorp*, including because it has none of the asserted jurisdictional issues the respondents there have identified. Resp. Br. 16, *Labcorp*, No. 24-304. At minimum, the Court should hold this petition for *Labcorp*.

CONCLUSION

The petition for a writ of certiorari should be granted, or at least held for *Labcorp*.

Respectfully submitted.

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