No. 25-50

IN THE

# Supreme Court of the United States

MIKE FITZHUGH, ET AL.

*Petitioners*,

v.

BRADLEY PATTON,

*Respondent*.

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

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

For more than five decades, this Court has recognized a "narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). Included within it are cases where the conduct challenged is so inherently transitory that the case becomes moot as to the named plaintiff "before the district court can reasonably be expected to rule on a certification motion." *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975). Named plaintiffs challenging pretrial detention procedures and conditions may therefore continue litigating a putative class action under the inherently transitory exception, even after their individual claims become moot, so long as "the constant existence of a class of persons suffering the deprivation is certain." *Gerstein*, 420 U.S. at 110 n.11; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991).

Respondent Bradley Patton filed suit on behalf of a putative class challenging Rutherford County, Tennessee's "source hearing" rule, under which Patton was held in pretrial detention until he could prove that his bail funds were not derived from criminal activity. Patton was released after he filed his complaint but before he could file his class-certification motion.

The question presented is whether the Sixth Circuit correctly held that Patton's class claims may proceed under the inherently transitory exception.

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## INTRODUCTION

More than 50 years ago, this Court recognized two circumstances in which a named plaintiff may continue litigating a putative class action after his individual claim becomes moot. First, a named plaintiff may continue representing a class that was certified before his claim became moot. *See Sosna v. Iowa*, 419 U.S. 393, 399-402 (1975). Second, a named plaintiff may continue representing a putative class if the challenged conduct is inherently transitory and would be effectively insulated from review absent such a rule, so long as "the constant existence of a class of persons suffering the deprivation is certain." *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). This Court has repeatedly held that challenges to the procedures and conditions of pretrial detention fall within the latter category. *See, e.g.*, *id.*; *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991).

This case involves a straightforward application of these precedents. Respondent Bradley Patton challenged Rutherford County, Tennessee's "source hearing" rule, under which he was kept in pretrial detention until he could prove that his bail funds were not derived from criminal activity. His individual claims became moot after he filed his complaint but before he could file a class-certification motion. The court of appeals correctly held that he was entitled to continue representing the class because the challenged conduct was "by its very nature temporary," the putative class of people "suffering the injury" was "substantial," and the claim therefore qualified for the *Gerstein* exception. Pet. App. 20a (internal quotation marks omitted) (first quoting *Wilson v. Gordon*, 822 F.3d 934, 945 (6th Cir. 2016), then quoting Am. Compl. ¶ 54).

Petitioners contend that the lower courts are divided over whether a class-certification motion must be pending when a named plaintiff's claim becomes moot in order for the plaintiff to continue to represent the class. Pet. 1-2. But no court of appeals has ever imposed such a requirement in the context of the inherently transitory exception to mootness, which is the only mootness exception at issue in this case.

Instead, the split petitioners identify implicates an entirely different mootness exception: the "picking-off" exception, which was developed by the lower courts to prevent defendants from strategically attempting to "pick off" named plaintiffs in putative class actions by intentionally mooting their claims, including by making them a full offer of judgment. In such cases, the lower courts were divided on the question petitioners identify. But that division has no relevance to the separate mootness exception at issue here. What's more, petitioners' purported circuit split has been largely overtaken by this Court's decision in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016), which held that an unaccepted offer of judgment does not moot an individual plaintiff's claim, eliminating the need for any mootness exception in that circumstance. *Id.* at 163. Petitioners' argument that review in this case is necessary to resolve "an entrenched 5-4 circuit split," Pet. 10, is thus wrong twice over: This case does not implicate the split they point to, and that split has little ongoing import.

Petitioners are also wrong on the merits. The Sixth Circuit properly applied this Court's decisions in *Sosna* and *Gerstein* to the circumstances presented here. Article III's case-or-controversy requirement is satisfied in inherently transitory putative class actions, where the claim is "by nature temporary" and where "the constant existence of a class of persons suffering the deprivation is certain." *Gerstein*, 420 U.S. at 110 n.11. This Court has never suggested that there must be a class-certification motion pending when the named plaintiff's claim becomes moot for the inherently transitory exception to apply. Instead, it has made clear that "where a named plaintiff's claim is 'inherently transitory,' and becomes moot prior to certification, a motion for certification may 'relate back' to the filing of the complaint." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 n.2 (2013) (citing *Cnty. of Riverside*, 500 U.S. at 51-52).

Petitioners' contrary argument conflates the rationales for the inherently transitory exception and the separate mootness exception that applies in class actions if the named plaintiff's claim becomes moot after a class is certified. Petitioners' preferred rule also makes little sense. Petitioners would require named plaintiffs to immediately file a "placeholder class certification motion" the day they file their complaints. Pet. 25. Neither this Court nor the lower courts impose such a requirement, and for good reason: "The problems posed by premature and meritless placeholder motions for class certification" are well documented. Pet. App. 25a. Such motions "strain judicial resources, tax a court's economy, and force litigants and counsel to engage in pretense." *Id.* Petitioners offer no persuasive reason for this Court to adopt a rule governing how district courts manage their dockets—much less one that would needlessly stretch courts' and litigants' limited resources.

## STATEMENT OF THE CASE

### I. Factual Background

Respondent Bradley Patton was arrested on December 18, 2021, in Rutherford County, Tennessee, and charged with several state drug offenses and a related firearm offense. Pet. App. 2a. Bail was originally set at $21,000, and Patton posted bail and was released. *Id.* After missing a court date and turning himself in, Patton posted an additional $5,000 to meet his increased bail obligation. *Id.* at 2a-3a. At a later point in the proceedings, one drug charge was upgraded and another offense was added. *Id.* at 3a. The assigned judge sua sponte quadrupled Patton's bond, requiring him to pay an additional $75,000. *Id.* Patton did not immediately turn himself in upon being notified about the bail increase, and the State successfully moved for another increase of $25,000. *Id.* This brought the total bail required for the case to $126,000, of which $100,000 remained unpaid. *Id.*

Because the cumulative bond obligation had reached $75,000, Patton became subject to Rutherford County's "source hearing" requirement. *Id.* Under this policy, detained criminal defendants may not be released on bail if the amount required meets or exceeds $75,000 unless the detainee appears at a court hearing and offers adequate documentation to prove that the bail money was not derived (directly or indirectly) from criminal activity. *Id.* (citing Rutherford County Rule 16.07(G)).

Patton sat in jail for several months before his attorney was able to obtain the necessary documentation, in consultation with Patton's family and friends, to support the legitimacy of the bail source. *Id.* at 4a. On June 13, 2023, Patton filed his motion to approve the bail source, accompanied by real estate bond paperwork totaling the outstanding $100,000. *Id.* His source hearing was scheduled for June 22, 2023. *Id.*

## II. District Court Proceedings

On the same day as his source hearing, Patton filed a putative class action against two county officials and three state circuit judges (petitioners here), challenging the source hearing requirement on procedural and substantive due process grounds. Pet. App. 4a. He sought to represent a class of similarly situated individuals in seeking declaratory and injunctive relief. *Id.* On the day he filed his complaint, the clerk's office issued a case management notice scheduling an initial conference for October 5, 2023, and requiring Patton to submit to the court a proposed case management order three days beforehand. *Id.* at 7a.

One week after filing his lawsuit, on June 29, 2023, Patton pleaded guilty to one drug charge and the firearm charge in his criminal case and was sentenced to 10 years of probation. *Id.* at 5a. He filed an amended complaint as of right on September 27, 2023, asserting that he had been released from pretrial detention and adding an Eighth Amendment claim for excessive bail. *Id.* The district court extended petitioners' deadline to respond to the amended complaint and rescheduled the case management conference to November 16, 2023. *Id.* at 7a-8a.

Petitioners then moved to dismiss the amended complaint. *Id.* at 5a. The district court stayed discovery pending its resolution of the motions to dismiss and entered a case management order, noting that the parties disputed class certification and reserving Patton's deadline for filing a class-certification motion. *Id.* at 8a. While the motions to dismiss were pending, the district court entered a revised case management order continuing to leave open the deadline for Patton's class-certification motion. *Id.* Although the parties repeatedly asked the district court to set a briefing schedule for the class-certification motion, it declined to do so. *Id.* at 24a.

The district court ultimately granted petitioners' motions to dismiss, holding that Patton's claims were moot. *Id.* at 33a-36a. In particular, the district court concluded that because Patton had been released from pretrial detention, there was "no ongoing harm" to him and any "future injury" was "speculative." *Id.* at 33a-34a. It rejected Patton's argument that he was entitled to the exception to mootness for claims that are capable of repetition yet evading review or that the standing of members of the "putative class could save his claims." *Id.* at 6a-7a; *see also id.* at 34a-36a.

## III. Court of Appeals Proceedings

The Sixth Circuit reversed. *See* Pet. App. 2a. The court of appeals first rejected petitioners' argument that the district court's dismissal of Patton's claim should be affirmed on the ground that Patton lacked standing because he was no longer in pretrial detention when he filed his amended complaint. *Id.* at 9a-11a. The court explained that it is well settled that standing is determined at the time the initial complaint is filed and that any subsequent change in the plaintiff's interest in the litigation sounds in mootness. *See id.*

Proceeding to mootness, the Sixth Circuit concluded that Patton's claims fall under the inherently transitory exception to mootness recognized by this Court in *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975), and *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). *See* Pet. 19a-26a. It explained that lower courts had "distilled from *Gerstein* two requirements for the 'inherently transitory' exception to apply: (1) that the injury be so transitory that it would likely evade review by becoming moot before the district court can rule on class certification, and (2) that it is certain other class members are suffering the injury." *Id.* at 20a (quoting *Wilson v. Gordon*, 822 F.3d 934, 945 (6th Cir. 2016)).

Here, the Sixth Circuit held, the "first requirement [was] clearly met in light of *Gerstein*," because pretrial detention is "by its very nature temporary, such that claims brought on behalf of the detained are 'inherently transitory.'" *Id.*; *see also id.* at 17a ("Just as for the plaintiff in *Gerstein*, Patton's time in pretrial detention under the source-hearing requirement was 'by nature temporary' and so evaded review." (quoting *Gerstein*, 420 U.S. at 110 n.11)). And it was also "certain that other class members [were] suffering the injury," because the size of the putative class was "substantial," with "numerous (likely hundreds of) applicable arrests … made each year." *Id.* at 20a (first quoting *Wilson*, 822 F.3d at 945, then quoting Am. Compl. ¶ 54). The court noted that petitioners did not dispute that Patton satisfied these factors. *Id.*

The Sixth Circuit then addressed petitioners' argument that, in order for the inherently transitory exception to apply, Patton must have filed a class-certification motion before his individual claim became moot. *Id.* at 20a-22a. The court disagreed, explaining that petitioners' argument was incompatible with "the rationale animating" the exception: Given the inherently transitory nature of the claim, a plaintiff might "be able to file a suit in time to have standing but [might] not have enough time to file a supported motion for class certification." *Id.* at 21a-22a. Other circuits, moreover, had recognized mootness exceptions for class-action claims in the absence of a pending motion for class certification. *Id.* at 22a-23a. The Sixth Circuit thus "adopt[ed] the well-reasoned position of our sibling circuits that the filing of a class-action complaint can serve as the prerequisite for arguing the 'inherently transitory' exception for class-action claims." *Id.* at 23a. Accordingly, it held, "[w]here a named plaintiff's claim is inherently transitory, and becomes moot prior to certification, a motion for certification may relate back to the filing of the complaint." *Id.* (alteration in original) (quoting *J.D. v. Azar*, 925 F.3d 1291, 1308 (D.C. Cir. 2019)).

The Sixth Circuit similarly was not persuaded by petitioners' argument that Patton had "skewered his own claims by sitting on his right to file a motion for class certification." *Id.* at 24a. While agreeing with petitioners that "timing matters when applying the relation-back doctrine," the court explained that any delay in class certification was not attributable to Patton. *Id.* To the contrary, the district court had "declined to set a date for the filing [of] a class-certification motion," even after the parties repeatedly asked for a briefing schedule on class certification. *Id.* at 24a-25a. Under these circumstances, Patton was not "required to file a placeholder motion simply to preserve his class-action claims." *Id.* at 24a. As the court observed, petitioners' proposed rule would exacerbate the myriad "problems posed by premature and meritless placeholder motions for class certification," which "strain judicial resources, tax a court's economy, and force litigants and counsel to engage in pretense." *Id.* at 25a.

## REASONS FOR DENYING THE PETITION

### I. The Decision Below Does Not Implicate a Circuit Split.

Petitioners urge the Court to grant review to resolve a purported circuit split over whether a putative class action must be dismissed if the named plaintiff's claim becomes moot before he files a class-certification motion. Pet. 11. But petitioners fail to identify a single case adopting such a rule in the context of the only exception to mootness at issue in this case: the inherently transitory exception. Instead, the circuit split petitioners identify involves a different mootness exception—the so-called "picking-off" exception—that is not implicated here. Petitioners' asserted split, moreover, was largely overtaken by this Court's decision in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016). In petitioners' remaining cases, the claims did not qualify for any exception to mootness at all and thus are similarly inapposite.

**1.** For more than five decades, this Court has recognized two exceptions to the general rule that a named plaintiff in a class action must have a "personal stake in the outcome of the lawsuit" at "all stages of review." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71-72 (2013) (first quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 478 (1990), then quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)). Under the first exception, a named plaintiff whose claim has been mooted can continue to represent a class that was certified before his claim became moot. *See Sosna v. Iowa*, 419 U.S. 393, 399-402 (1975). Under the second exception, a named plaintiff whose claim became moot after the filing of a class complaint may continue to represent the putative class if the challenged conduct is "inherently transitory" and would therefore otherwise be effectively insulated from review, so long as "the constant existence of a class of persons suffering the deprivation is certain." *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); *see infra* pp. 20-23 (discussing these exceptions in greater detail).

In the years following *Sosna* and *Gerstein*, a number of circuits recognized an additional exception to mootness for putative class actions in which the defendant sought to "pick off" the named plaintiffs by intentionally mooting their claims. In one common pick-off strategy, defendants would offer the named plaintiffs the full amount of their individual claims under Rule 68 of the Federal Rules of Civil Procedure. *See, e.g.*, *Genesis Healthcare*, 569 U.S. at 69-70.[1] Even if the named plaintiffs rejected or did not respond to the offer, the defendant would move to dismiss the case, arguing that because the named plaintiffs had been offered complete relief, they no longer possessed

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[1] Under Rule 68, a "party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms." Fed. R. Civ. P. 68(a). If the opposing party accepts, either party "may then file the offer and notice of acceptance" with the court, and the "clerk must then enter judgment." *Id.*

the requisite personal stake in the case needed to satisfy Article III's case-or-controversy requirement. *See, e.g.*, *id.* at 70. Several courts of appeals responded by creating an additional exception to mootness to protect against such strategic attempts by defendants to insulate themselves from suit before a class had been certified.

The circuits disagreed, however, on when in the litigation a plaintiff could benefit from this "picking-off" exception. A majority of circuits permitted plaintiffs to proceed with a suit in which they had received, but did not accept, an offer of judgment, regardless of whether they had moved for class certification before the offer was made. These courts followed the rule that, "where a defendant makes a Rule 68 offer to an individual claim that has the effect of mooting possible class relief asserted in the complaint, the appropriate course is to relate the certification motion back to the filing of the class complaint." *Weiss v. Regal Collections*, 385 F.3d 337, 348 (3d Cir. 2004), as amended (Sept. 29, 2004); *see also, e.g.*, *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011); *Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1249 (10th Cir. 2011); *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698, 707 (11th Cir. 2014). Other circuits, however, limited the picking-off exception to situations in which the named plaintiffs had already filed a class-certification motion before the defendant attempted to moot their claims. *See, e.g.*, *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1045 (5th Cir. Unit A July 1981); *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011); *see also Fontenot v.*

*McCraw*, 777 F.3d 741, 750-51 (5th Cir. 2015) (declining to extend the picking-off exception to a case in which a class-certification motion was not yet pending when defendants mooted the named plaintiffs' claims).[2]

Almost all of the cases petitioners cite in support of their purported circuit split address this picking-off exception and the related timing question. *See* Pet. 11-16 (discussing *Fontenot*, *Damasco*, *Stein*, *Lucero*, *Pitts*, *Lusardi*, *Weiss*, and *Richardson*). Each involved conduct by a defendant in a putative class action to moot the named plaintiff's claim before the class had been, or could be, certified. None held that the *inherently transitory* exception—the only exception implicated by the decision below—requires the filing of a class-certification motion before the named plaintiff's claim becomes moot. Indeed, several of the cases that petitioners rely on specifically recognized the difference between the picking-off exception—which was developed in response to "defendant's litigation strategy"—and the inherently transitory exception, which focuses on the "substance of the plaintiff's claim." *Fontenot*, 777 F.3d at 750; *see also Damasco*, 662 F.3d at 897 (similar).

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[2] Petitioners correctly note that the Third Circuit has issued decisions on both sides of their asserted circuit split. *See* Pet. 15-16 (citing *Lusardi v. Xerox Corp.*, 975 F.2d 964 (3d Cir. 1992), and *Richardson v. Bledsoe*, 829 F.3d 273 (3d Cir. 2016)). These cases, like *Weiss*, involved only the picking-off exception.

Petitioners rely on stray language from *Fontenot* and *Damasco* to erroneously suggest the existence of a circuit split that would bear on the decision below. Contrary to petitioners' contention, the Fifth Circuit in *Fontenot* did not "explain[] that the precedent *on the inherently transitory exception* does not extend to situations in which there is 'no certification motion … even pending' at the time a plaintiff's claims are 'mooted.'" Pet. 12 (second alteration in original) (emphasis added) (quoting *Fontenot*, 777 F.3d at 751). *Fontenot* never considered whether the inherently transitory exception applied. It merely mentioned that exception in describing this Court's mootness case law and the Fifth Circuit's separate development of the picking-off exception. But the panel's observation that "no certification motion was even pending"—the language petitioners highlight, *see* Pet. 12—appeared only in its explanation of why the picking-off exception did not save the case from mootness. *Fontenot*, 777 F.3d at 751.

Petitioners also claim that the Seventh Circuit in *Damasco* resolved "how the timing of a mooting event matters in class actions for Article III purposes" and that it "drew the dividing line for mootness at the filing of a class-certification motion." Pet. 12-13. But it did so only in the context of the picking-off exception. Although the Seventh Circuit recognized that circuit precedent had "long held that a defendant cannot moot a case by making an offer *after* a plaintiff moves to certify a class," it declined to extend this exception to a case "not certified as a class action and with no motion for class certification even pending." *Damasco*, 662 F.3d at 895-96. And it rejected the plaintiff's alternative argument—that "his situation f[ell] under the established exception for inherently transitory claims"—not because of the absence of a class-certification motion. *Id.* at 897. Rather, it concluded that the inherently transitory exception did not apply because there was no uncertainty about "whether 'any member of the class would maintain a live controversy long enough for a judge to certify a class.'" *Id.* (quoting *Olson v. Brown*, 594 F.3d 577, 580 (7th Cir. 2010)).

Making matters worse for petitioners, the picking-off exception split they identify was largely overtaken by *Campbell-Ewald*, which rejected the assumption on which most of the cases constituting the split were predicated: that "an unaccepted offer to satisfy the named plaintiff's individual claim [is] sufficient to render a case moot when the complaint seeks relief on behalf of the plaintiff and a class of persons similarly situated." 577 U.S. at 156. Instead, this Court held, a Rule 68 offer, "once rejected, ha[s] no continuing efficacy" and therefore does not moot a plaintiff's individual claim. *Id.* at 163. That holding made it unnecessary to consider whether an exception to mootness would apply to the putative class claims.[3]

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[3] The "host of commentators [that] have highlighted the split," Pet. 16 (internal quotation marks omitted), all addressed the disagreement over the scope of the picking-off exception. None identified any circuit split involving the inherently transitory excep-

*(cont'd)*

**2.** Petitioners identify only three circuit cases that did not involve the picking-off exception, two from the First Circuit and one from the Fourth Circuit. But the claims in those cases did not qualify for a mootness exception at all. Those cases therefore had no occasion to address the question presented here: whether a class-certification motion must be pending before a named plaintiff's claim becomes moot for the inherently transitory exception to apply.

In *Cruz v. Farquharson*, 252 F.3d 530 (1st Cir. 2001), the First Circuit considered a putative class action seeking to require the Immigration and Naturalization Service (INS) to process petitions by citizens requesting permanent residence for their noncitizen spouses. *Id.* at 531. Shortly after the lawsuit was filed, INS approved the pending petitions of the

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tion. *See* 1 Rubenstein, *Newberg and Rubenstein on Class Actions* § 2:11 (6th ed. Supp. 2025) (recognizing division of authority only "in the absence of any substantive exception" to mootness, such as "the exception for 'inherently transitory' claims"); Johnathan Lott, *Moot Suit Riot: An Alternative View of Plaintiff Pick-Off in Class Actions*, 2013 U. Chi. Legal F. 531, 531, 555 (2013); Daniel A. Zariski et al., *Mootness in the Class Action Context: Court-Created Exceptions to the "Case or Controversy" Requirement of Article III*, 26 Rev. Litig. 77, 88-99 (2007); Comment, *Justiciability—Class Action Mootness*—Campbell-Ewald Co. v. Gomez, 130 Harv. L. Rev. 427, 434-35 (2016); M. Andrew Campanelli, *You Can Pick Your Friends, but You Cannot Pick Off the Named Plaintiff of a Class Action: Mootness and Offers of Judgment Before Class Certification*, 4 Drexel L. Rev. 523, 534-35 (2012).

named plaintiffs and then moved to dismiss on mootness grounds; the named plaintiffs opposed the motion and moved for class certification. *Id.* at 532-33. The court of appeals concluded that the case was moot because the named plaintiffs had received complete relief in the form of a favorable administrative action. *Id.* at 533. And it rejected the argument that various exceptions to mootness applied. It concluded that the *Sosna* exception did not apply because no class had been certified at the time the named plaintiffs' claims became moot. *Id.* And it concluded that the named plaintiffs had made "no … showing" that their claims were inherently transitory or that there was a "realistic threat that no trial court ever [would] have enough time to decide the underlying issues (or, at least, to grant a motion for class certification) before a named plaintiff's individual claim bec[ame] moot." *Id.* at 535. The court thus had no occasion to address whether a class-certification motion must be pending for the inherently transitory exception to apply.

In arguing otherwise, petitioners seize on a footnote in *Cruz* recognizing that the Third Circuit had permitted a class action to "endure even though the named plaintiff's claims have become moot, as long as a motion for class certification is pending at the time that mootness overtakes the plaintiff's claims." Pet. 13 (citing *Cruz*, 252 F.3d at 534 n.3). But the First Circuit was not discussing the inherently transitory exception at that point in its opinion, and the Third Circuit decision it cited did not involve the inherently transitory exception. *See Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 136 (3d Cir.

2000). The *Cruz* court ultimately declined to "consider the correctness" of the picking-off exception "[b]ecause no such motion was pending when the claims of the named plaintiffs in this case became moot." 252 F.3d at 534 n.3.

Petitioners also cite *Breda v. Cellco Partnership*, 934 F.3d 1 (1st Cir. 2019), *see* Pet. 13, but that case is even further afield. That decision was not about mootness but rather whether the plaintiff's claim fell under the plain language of the Telephone Consumer Protection Act. *See Breda*, 934 F.3d at 3. In a footnote, the First Circuit stated that "[b]ecause the district court fully resolved [the named plaintiff's] personal claims before she filed a motion for class certification, any class claims were mooted by the judgment for [defendant]." *Id.* at 6 n.10. But there is no indication that the named plaintiff even tried to argue that the inherently transitory exception applied, much less that her claim could qualify for it.

The Fourth Circuit's decision in *Nestler v. Board of Law Examiners of the State of North Carolina*, 611 F.2d 1380 (4th Cir. 1980), is similarly inapposite. There, the Fourth Circuit affirmed the district court's conclusion that a putative class action seeking injunctive relief against the board of bar examiners had been mooted by the named plaintiffs' admission to the bar. *Id.* at 1382. The court rejected the plaintiffs' argument that their claims were "capable of repetition, yet evading review," because plaintiffs would "never again be required to take the North Carolina bar examination or the moral character interview." *Id.* It further noted that the expected duration of the named plaintiffs' claims—the length of time a person who had failed the moral character portion of the bar application process was required to wait before reapplying—was three years, "a substantially longer period than those generally found to satisfy" the inherently transitory exception. *Id.* Like the First Circuit, the Fourth Circuit in *Nestler* had no occasion to address whether a class-certification motion must be pending at the time the named plaintiff's claim becomes moot for the inherently transitory exception to apply.

To be sure, in rejecting the named plaintiffs' argument that the case was not moot, *Nestler* noted that the "plaintiffs never moved for class certification." *Id.* But it did so only to emphasize that the *Sosna* exception did not apply: Because no motion for class certification had been filed, "no plaintiff class was certified," and there was no class that existed as a "separate entity." *Id.* Nothing about that statement suggests that a class-certification motion must be pending for the entirely distinct inherently transitory exception to apply.

In sum, Petitioners do not and cannot identify any circuit split over whether named plaintiffs must file a class-certification motion before their individual claim has been mooted for the inherently transitory mootness exception to apply.

## II. The Decision Below Correctly Applied Settled Law.

This Court's review is also unwarranted because the Sixth Circuit correctly applied the Court's precedent in concluding that Patton's case could proceed under the inherently transitory exception. Petitioners' arguments to the contrary are wrong and conflate the rationales for the two distinct mootness exceptions.

**1.** As noted above, *see supra* pp. 10-11, the Court for more than 50 years has recognized two mootness exceptions applicable to class actions. First, under *Sosna*, a named plaintiff may continue representing a class that was certified before her individual claim became moot. *See* 419 U.S. at 399-402. The Court reasoned in *Sosna* that, upon class certification, the class "acquired a legal status separate from the interest asserted by" the named plaintiff, and it was "clear" that the challenged law would continue to be enforced "against those persons in the class that [the named plaintiff] sought to represent." *Id.* at 399-400. Although the case was "no longer alive" or even "capable of repetition, yet evading review" *as to the named plaintiff*, it "remain[ed] very much alive for the class of persons she ha[d] been certified to represent." *Id.* at 401. The requisite Article III case or controversy therefore continued to exist between the named defendant "and a member of the class represented by the named plaintiff." *Id.* at 402.[4]

*Sosna* also anticipated a separate exception for inherently transitory claims. *Id.* at 402 n.11. It noted that, with respect to class actions, "[t]here may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on a certification motion." *Id.* In such cases, the certification may "'relate back' to the filing of the complaint," "depend[ing] upon the circumstances of the particular case and especially the reality … that otherwise the issue would evade review." *Id.*

In *Gerstein*, this Court officially recognized the inherently transitory exception and identified one type of class action that is among the "narrow class of cases in which the termination of a class representative's

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[4] In *U.S. Parole Commission v. Geraghty*, 445 U.S. 388 (1980), this Court extended the *Sosna* exception to permit a named plaintiff to maintain an appeal of the denial of class certification after his individual claim became moot. *Id.* at 402-04. It held that "[a] plaintiff who brings a class action presents two separate issues for judicial resolution"—"the claim on the merits" and "the claim that he is entitled to represent a class"—and that he retains a "personal stake" in obtaining class certification even after his individual claim becomes moot. *Id.* at 402. If the class certification denial was reversed on appeal and a class was subsequently properly certified, the named plaintiff could thereafter litigate the merits of the class claim consistent with *Sosna*. *Id.*

claim does not moot the claims of the unnamed members of the class"—those involving "pretrial detention." 420 U.S. at 110 n.11. It noted that pretrial detention is "by nature temporary, and it is most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted." *Id.*; *see also id.* (noting that it was "by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class"). Such persons could suffer "repeated deprivations," and it is "certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures," "with a continuing live interest in the case." *Id.*; *see also id.* (noting that in the case before it, "the constant existence of a class of persons suffering the deprivation is certain").

Since *Gerstein*, this Court has reiterated that courts have jurisdiction to review the merits of a pretrial detention class action where "the class was not certified until after the named plaintiffs' claims had become moot." *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991). "In such cases, the 'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution." *Id.*; *see also Nielsen v. Preap*, 586 U.S. 392, 403-04 (2019) (plurality opinion); *United States v. Sanchez-Gomez*, 584 U.S. 381, 388 (2018); *Schall v. Martin*, 467 U.S. 253, 256 n.3 (1984); *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978). Whether the exception applies "focuse[s] on the fleeting nature of the challenged conduct giving rise to the claim." *Genesis Healthcare*, 569 U.S. at 75-77; *see also*

*Sanchez-Gomez*, 584 U.S. at 388 (the *Gerstein* "exception applies when the pace of litigation and the inherently transitory nature of the claims at issue conspire to make" the general requirement of a plaintiff with a live claim at the time of class certification "difficult to fulfill"). Though pretrial detention is the quintessential example of an inherently transitory claim, courts of appeals have recognized other claims that fall into the "narrow class of cases," *Gerstein*, 420 U.S. at 110 n.11, to which the exception applies. *See, e.g.*, *Doe v. Hochul*, 139 F.4th 165, 184 (2d Cir. 2025) (putative class action challenging state law decriminalizing abortion brought on behalf of class of unborn fetuses); *Wilson v. Gordon*, 822 F.3d 934, 945 (6th Cir. 2016) (putative class action challenging agency failure to timely hold Medicaid hearings); *Belgau v. Inslee*, 975 F.3d 940, 949-50 (9th Cir. 2020) (putative class action by former union members challenging inability to immediately cease dues contributions upon resignation).

**2.** The Sixth Circuit correctly held that *Gerstein* and its progeny control here. *See* Pet. App. 19a-20a. As the court noted, lower courts "have distilled from *Gerstein* two requirements for the 'inherently transitory' exception to apply: (1) that the injury be so transitory that it would likely evade review by becoming moot before the district court can rule on class certification, and (2) that it is certain other class members are suffering the injury." *Id.* at 20a (quoting *Wilson*, 822 F.3d at 945). In this case, the first requirement was "clearly met in light of *Gerstein*," as "[p]retrial detention is by its very nature temporary." *Id.* The second was also met in light of Patton's allegations that while the "precise size of the class is unknown," it is "substantial, given that numerous (likely hundreds of) applicable arrests are made each year." *Id.* (quoting Am. Compl. ¶ 54). Indeed, petitioners did not dispute that Patton's allegations satisfied the two prongs of the inherently transitory exception. *See id.*

Instead, petitioners asserted that the inherently transitory exception did not apply because Patton had not filed a motion for class certification by the time his claim became moot. *See id.* The Sixth Circuit correctly rejected that argument. *Id.* at 20a-25a. As the court explained, petitioners' preferred rule is at odds with the "rationale animating the 'inherently transitory' exception." *Id.* at 21a. By definition, inherently transitory claims are time-bound, and a "named plaintiff for a putative class may be able to file a suit in time to have standing but may not have enough time to file a supported motion for class certification." *Id.* at 21a-22a.[5] In such circumstances, the case may continue because the named plaintiff will not have the "opportunity to file a motion for class certification to preserve their claims from becoming moot." *Id.* at 22a.

The Sixth Circuit also recognized the significant practical challenges that petitioners' preferred rule would create for district courts in managing their

[5] Indeed, this case demonstrates the short time that can elapse between the filing of a complaint and the mooting of an inherently transitory claim: Patton's own claims were mooted when he pleaded guilty just one week after he filed his complaint and was released from pretrial detention to probation.

dockets. A rule that the inherently transitory exception applies only if a class-certification motion is pending would lead plaintiffs to "file so-called 'placeholder' motions for class certification solely to prevent defendants from mooting the claims of would-be class representatives." *Id.* at 25a (quoting *Richardson*, 829 F.3d at 284). The problems "posed by premature and meritless placeholder motions for class certification" have been well documented. *Id.* Petitioners' approach would require plaintiffs to "race to the courthouse to file empty, placeholder motions that may or may not ever be litigated"; "seem[s] contrary to the spirit" of Federal Rule of Civil Procedure 11(b); and "serves to strain judicial resources, tax a court's economy, and force litigants and counsel to engage in pretense." *Id.* (first quoting *Church v. Accretive Health, Inc.*, 299 F.R.D. 676, 679 (S.D. Ala. 2014), then quoting *Smith v. Interline Brands, Inc.*, 87 F. Supp. 3d 701, 703 (D.N.J. 2014)); *see also id.* (collecting cases); *Richardson*, 829 F.3d at 284 (collecting cases).

The Sixth Circuit also properly rejected petitioners' argument that Patton "skewered his own claims by sitting on his right to file a motion for class certification." Pet. App. 24a. Although "timing matters when applying the relation-back doctrine," petitioners' argument that Patton had not moved quickly enough did not "square with the record." *Id.* Most notably, the parties had asked the district court to set a date for the filing of a motion for class certification several times, but the district court declined to do so. *Id.* In light of his diligence, Patton was not "required to file a placeholder motion simply to preserve his class-action claims." *Id.*

**3.** Petitioners' contrary arguments confuse the rationales for the two mootness exceptions. As explained above, *see supra* pp. 20-21, under the *Sosna* exception, the normal rule that a named plaintiff must maintain a concrete stake in the controversy throughout the litigation is excused if a class has been certified. *See Sosna*, 419 U.S. at 402-03. That is because the class of unnamed persons have a "legal status separate from the interest asserted by" the named plaintiff. *Id.* at 399. Article III's requirement is met by the ongoing controversy between the defendant and a "member of the class represented by the named plaintiff." *Id.* at 402.

Petitioners' argument that the requisite "legal status" for the unnamed class members attaches at the moment a class-certification motion is filed, *see* Pet. 21, appears to be at odds with *Sosna*, which holds that the necessary legal status vests when a class is *certified*. *See Sosna*, 419 U.S. at 399, 402.[6] But whatever the merits of petitioners' argument with respect to the *Sosna* exception, it has nothing to do with the excep-

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[6] Petitioners' approach is also at odds with Federal Rule of Civil Procedure 23, which does not require that a motion be filed before a class can be certified. *See* Fed. R. Civ. P. 23(c)(1)(A); *see also* Ann. Manual Complex Lit. § 21.11 n.742 (4th ed. 2004) ("A court may act on its own initiative in deciding whether to certify a class.").

tion at issue here—the inherently transitory exception. The *Sosna* exception applies in cases in which a district court can, in the normal course, rule on a class-certification motion before the controversy between the named plaintiff and the defendant becomes moot, thereby creating a class with the necessary "legal status" for the case to continue. *Id.* at 399.

In contrast, the inherently transitory exception is reserved for cases in which the district court cannot "reasonably be expected to rule on a certification motion" before the controversy between the named plaintiff and the defendant becomes moot. *Id.* at 402 n.11; *see also Gerstein*, 420 U.S. at 110 n.11. In such cases, the named plaintiff may continue litigating the case not because the unnamed class members have acquired a "legal status" by virtue of class certification. *Cf. Sosna*, 419 U.S. at 399. Instead, the named plaintiff may proceed because if he could not, "the transitory nature of the conduct giving rise to the suit would effectively insulate defendants' conduct from review." *Genesis Healthcare*, 569 U.S. at 76. As noted, the applicability of this exception "has invariably focused on the fleeting nature of the challenged conduct giving rise to the claim," *id.* at 76-77—not whether a class with a legal interest separate and apart from that of the named plaintiff has been certified. Moreover, there will always be "someone with a live interest" in the case. *See* Pet. 24 (emphasis omitted). To proceed under the inherently transitory exception, a named plaintiff must show that "the constant existence of a class of persons suffering the deprivation is certain."

*Gerstein*, 420 U.S. at 110 n.11; *accord Sanchez-Gomez*, 584 U.S. at 386.

Petitioners' other critiques of the Sixth Circuit's reasoning lack merit. The decision below does not rely on "'[p]ractical' considerations" to overcome any "Article III deficiency." Pet. 24 (quoting Pet. App. 25a). Rather, it involves a straightforward application of *Gerstein*, which held that Article III is satisfied if the conditions for the inherently transitory exception are met. *See* 420 U.S. at 110 n.11. Nor does the decision below "clash[] with" the requirement in associational and third-party standing cases that there be "someone with a live interest" in the case. Pet. 24 (emphasis omitted). As the court of appeals recognized—and as petitioners have not disputed—Patton has alleged that there are "likely hundreds" of people who will be subject to Rutherford County's source hearing rule every year. Pet. App. 20a.

Petitioners' "jurisdictional puzzle[]" argument, *see* Pet. 23, rests on a similar misunderstanding of how the inherently transitory exception operates. The exception does not depend on speculation about whether a named plaintiff might someday move for class certification. It applies when, at the outset of a putative class action, the nature of the challenged conduct makes it certain that the claim's transitory duration will otherwise preclude review and that other people are presently subject to the same harm. *See Gerstein*, 420 U.S. at 110 n.11. Under those circumstances, the relation-back doctrine preserves jurisdiction from the moment the complaint is filed; there is no "toggle," Pet. 23, between mootness and non-mootness depending on later litigation choices. *See Genesis Healthcare*, 569 U.S. at 76-77 (availability of the exception turns on "the fleeting nature of the challenged conduct," not procedural posture).

Finally, petitioners are wrong that the decision below creates "asymmetrical preclusion" problems. Pet. 23. To be sure, if a defendant prevails on the merits of a named plaintiff's claim before a class is certified, that ruling would not bind the class unless a class is later certified. But that is true with respect to all class actions. *See Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011). And if a class is eventually certified in this case, any adverse judgment on the merits would thereafter bind all members of the class. *See Sosna*, 419 U.S. at 399 n.8. In any event, the same problem would arise under petitioners' preferred rule. If a defendant secured a favorable decision on the merits while a motion for class certification was pending, that judgment would bind only the named plaintiff.

## III. This Case Does Not Raise an Important Question of Federal Law.

Petitioners do not and cannot identify any issue of "utmost importance" in the decision below. *See* Pet. 17. As discussed above, *see supra* p. 10-19, the decision does not implicate any "divide over [a] jurisdictional question"—much less an "intolerable" one, *see* Pet. 2. Nor will it result in courts issuing "advisory opinions," *id.* at 18, as this Court has already recognized that Article III is satisfied in class actions where, as here, it is "most unlikely that any given individual could have his constitutional claim decided on appeal before he is either released or convicted," and it is "certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures." *Gerstein*, 420 U.S. at 110 n.11.

Petitioners' practical arguments are equally unavailing. Neither the overall number of class actions nor their "significant costs," Pet. 19, justifies review in this case, which falls within the "narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class," *Gerstein*, 420 U.S. at 110 n.11. In any event, petitioners' preferred rule would do little to redress their concerns. Plaintiffs could simply "file empty, placeholder motions that may or may not ever be litigated" alongside their complaints—a practice the court of appeals rightly warned would "strain judicial resources, tax a court's economy, and force litigants and counsel to engage in pretense." Pet. App. 25a (quoting *Church*, 299 F.R.D. at 679). Petitioners offer no reason for this Court to impose a rule that would mandate such a wasteful practice.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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