No. 25-534

IN THE

Supreme Court of the United States

ANDREW HARRINGTON, *et al.*,

Petitioners,

v.

CRACKER BARREL OLD COUNTRY STORE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

JAMES M. COLEMAN
JASON D. FRIEDMAN
CONSTANGY, BROOKS, SMITH & PROPHETE LLP
12500 Fair Lakes Circle, Suite 300
Fairfax, VA 22033

STEVEN B. KATZ
Counsel of Record
CONSTANGY, BROOKS, SMITH & PROPHETE LLP
2029 Century Park East, Suite 1100
Los Angeles, CA 90067
(310) 909-7775
skatz@constangy.com

Counsel for Respondent

120771

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTRODUCTION

Mr. Harrington's petition regarding specific personal jurisdiction does not present an issue justifying this Court's review.

The Ninth Circuit applied settled law and the plain text of Federal Rule of Civil Procedure 4(k)(1)(A) to hold that, when a federal district court exercises jurisdiction over a nonresident defendant solely because of state-based service of process, the same Fourteenth Amendment limits that bind a forum state's courts bind its federal district courts too. The Third, Sixth, Seventh, and Eighth Circuits all agree (as do numerous district courts). *See Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 727–28 (7th Cir. 2024); *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 387 (3d Cir. 2022); *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865 (8th Cir. 2021); *Canaday v. Anthem Cos.*, 9 F.4th 392, 399–400 (6th Cir. 2021). Only the First Circuit disagrees, based on *dicta*-driven reasoning about post-service joinder. *See Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84 (1st Cir. 2022). The majority view conflicts with no decision of this Court, and the Third, Seventh and Ninth Circuits all reject the First's reasoning. *See* Pet. App. 14a; *Vanegas*, 113 F.4th at 729; *Fischer*, 42 F.4th at 387 n.10. There is no reason to believe that the First will not soon join the majority.

Three terms ago, this Court rejected the very same arguments raised by Mr. Harrington when it denied *certiorari* in *Fischer* (Case No. 22-396):

- Both petitions raised the same question, arguing that once a federal district court secures personal jurisdiction over a defendant through proper service by the named plaintiff in a Fair Labor Standards Act collective action, that court may adjudicate claims of all similarly situated opt-in plaintiffs, no matter where their claims arose. This means there is no requirement that an opt-in plaintiff's claim bears any connection to the forum state, nor must each opt-in satisfy state-based jurisdictional rules.

- Both centered their arguments on the distinction between federal and state due process limits on personal jurisdiction. Both maintained that in federal court actions under the FLSA, the Fifth Amendment—focusing on national contacts—governs, not the Fourteenth Amendment's minimum contacts with the forum state.

- Both directly challenged application of *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255 (2017), to FLSA collective actions filed in federal court.

- Both contended FLSA § 216(b) was designed by Congress to create a national collective action mechanism, so all similarly situated employees could join a single suit regardless of geography.

- Both referenced the pre-*Bristol-Meyers Squibb* practice of federal courts allowing nationwide collective actions in FLSA cases without imposing separate personal jurisdiction standards on opt-

> ins. Both petitions argued this practice supported their shared legal theory and supported their interpretation of Rule 4, the Fifth Amendment, and congressional purpose.

The circuit split is even less compelling today. When this Court previously denied *certiorari*, the circuits were split 3-1, with the First in the minority, and only one circuit had an opportunity to consider the First's reasoning. (The Third rejected it in *Fischer*.). Today, the Seventh and Ninth have joined the Third in rejecting the First's reasoning, and no other circuit has joined the First. There is less reason to grant *certiorari* today than when this Court previously rejected it.

"[S]ome cases are not sufficiently important to warrant Supreme Court review despite the existence of a conflict. For example . . . [when] it [is] reasonable to expect that the courts that rendered them would reconsider their results in light of intervening developments." Stephen M. Shapiro, *et al.*, Supreme Court Practice, ch. 6, § 6.37(i)(1) (11th ed. 2019) (ebook). Given the growing momentum among the circuits expressly rejecting the First's minority-of-one view, the question presented by Mr. Harrington falls within this category.

Last term's decision in *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025), does not change things. *Fuld* concerned the Fifth Amendment's due-process constraints on federal jurisdiction over foreign sovereign defendants in suits brought under the Anti-Terrorism Act. It did not hold—or even suggest—that federal courts exercising jurisdiction based on state long-arm service may disregard the Fourteenth Amendment

limits incorporated by Rule 4(k)(1)(A). Mr. Harrington's contrary reading would require rewriting Rule 4 and upending decades of consistent application.

Still, until the First reverses itself and falls into line with the majority of circuits, forum-shopping remains a problem. Mr. Harrington's counsel has already told the legal press that the "easy solution" to get around his loss "is to just file . . . a collective action within the First Circuit, which allows for nationwide notice." Emmy Freedman, *9th Circ. Limits Cracker Barrel Collective To In-State Workers*, Law360 (July 2, 2025) (quoting counsel).[1] Such blatant forum-shopping offends the decisions of this Court and the interests of justice. To prevent this misuse of the justice system, this Court need not conduct plenary review. It could affirm following GVR in a short *per curiam* opinion rejecting the First Circuit's views.[2]

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1. Available on the internet at https://www.law360.com/articles/2359995/9th-circ-limits-cracker-barrel-collective-to-in-state-workers.

2. This Court has employed this procedure in the past in the face of doctrinal error without a substantial circuit conflict. *See, e.g., Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530 (2012) (per curiam opinion reversing and remanding lower court decision at odds with Supreme Court precedent following GVR order). A per curiam opinion reversing and remanding would be a decision on the merits with precedential value. *See, e.g., Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 658 (2022) (characterizing *Marmet Health* as "our precedent[]"); *Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023) (citing *Marmet Health* as precedent); *Noohi v. Toll Bros., Inc.*, 708 F.3d 599, 612 (4th Cir. 2013) (distinguishing *Marmet Health* on its facts, implying precedential value). See also, generally, *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 166-67 (1996) (discussing the Court's "broad power to GVR")

In short, the decision below faithfully applied settled law, conflicts with none of this Court's precedents, and presents a less compelling split than the Court previously rejected just three terms ago. Mr. Harrington's petition should be denied.

STATEMENT OF THE CASE

1. Statutory and Procedural Background

The Fair Labor Standards Act of 1938 protects covered employees from substandard wages and excessive hours by setting a federal minimum wage and overtime requirements, enforceable through private actions. 29 U.S.C. § 216(b). To help with enforcement, Congress authorized employees to sue "for and in [*sic.*] behalf of . . . other employees similarly situated," provided each gives written consent filed with the court. Unlike Federal Rule of Civil Procedure 23 classes, FLSA collectives are opt-in: employees become parties only by filing consent forms. *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

Rule 4(k)(1)(A) provides that service of a summons establishes personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Where Congress enacts no broader federal service provision, federal courts necessarily borrow the state's jurisdictional reach. That linkage ensures that when federal courts sit in a state and apply state-based service, they remain bound by the Fourteenth Amendment's limitations on that state's courts. *Bristol-Myers Squibb,* 582 U.S. at 262-63.

2. Factual and Procedural History

Cracker Barrel Old Country Store, Inc. is incorporated and headquartered in Tennessee and operates over 650 restaurants nationwide, including just fourteen in Arizona. Mr. Harrington and his fellow plaintiffs—current or former servers employed in Arizona, Ohio, North Carolina, and Florida—filed this FLSA action in the District of Arizona, alleging that Cracker Barrel's tip-credit and off-the-clock practices violated the FLSA.

They tried to conditionally certify a nationwide collective of all similarly situated servers. Cracker Barrel opposed, arguing that the district court lacked personal jurisdiction to adjudicate claims of opt-in plaintiffs whose alleged injuries occurred outside Arizona. The district court disagreed and conditionally certified a nationwide collective, reasoning that because one named plaintiff had worked in Arizona, jurisdiction over Cracker Barrel extended to all claims. Pet. App. 46a–47a.

The district court certified an interlocutory appeal under 28 U.S.C. § 1292 to resolve whether *Bristol-Myers Squibb* restricts a federal court's jurisdiction over out-of-state opt-in plaintiffs. Pet. App. 82a. The Ninth Circuit accepted the appeal and reversed. Pet. App. 10a–13a. It held Rule 4(k)(1)(A) incorporates the same Fourteenth Amendment limits which bind state courts and bar adjudication of claims by opt-in plaintiffs whose injuries arose outside Arizona. The circuit rejected Mr. Harrington's argument that the Fifth Amendment alone governs, explaining that Rule 4 ties a federal court's jurisdiction to that of the forum state's courts unless a

federal statute provides otherwise. This decision aligns with the Third, Sixth, Seventh, and Eighth Circuits.

Mr. Harrington sought rehearing *en banc*; the Ninth Circuit denied it. Pet. App. 89a.

REASONS FOR DENYING THE PETITION

I. There Is No Mature or Entrenched Split Among the Circuits

Mr. Harrington's principal argument for review is that the circuits are divided on whether *Bristol-Myers Squibb* applies to FLSA collective actions. That contention is overstated. The split is shallow, outcome-driven, and closer to convergence since this Court was last asked to take the issue up—and declined.

1. Every court of appeals to have considered the question—except one—has concluded that when a federal court's jurisdiction depends on Rule 4(k)(1)(A), the Fourteenth Amendment's limits govern.

- Sixth Circuit—*Canaday v. Anthem Cos.*, 9 F.4th 392 (6th Cir. 2021): Held that out-of-state opt-in plaintiffs could not join because the defendant was subject only to specific jurisdiction based on in-state conduct.

- Eighth Circuit—*Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861 (8th Cir. 2021): Reached the same conclusion, citing *Bristol-Myers Squibb* as controlling authority.

- Third Circuit—*Fischer v. FedEx Corp.*, 42 F.4th 366 (3d Cir. 2022): Held that opt-in plaintiffs whose claims arose outside the forum state cannot rely on the named plaintiffs' contacts to establish jurisdiction.

- Seventh Circuit—*Vanegas v. Signet Builders, Inc.*, 113 F.4th 718 (7th Cir. 2024): Adopted *Canaday*'s reasoning and stressed that "when the court asserts its jurisdiction through Rule 4(k)(1)(A) service, all it gets is what a state court would have." *Id.* at 729.

The Ninth Circuit followed these decisions. Pet. App. 10a–13a. Its reasoning does not deepen a conflict but joins the clear trend of appellate uniformity.

2. In the past three Terms, the same question has been presented to this Court more than once, and it declined review every time. *See Fischer v. FedEx Corp.*, No. 22-396 (Mar. 6, 2023); *Day & Zimmermann NPS, Inc. v. Waters*, No. 21-1192 (June 6, 2022). Those denials confirm that the Court sees no need to intervene. Mr. Harrington offers no changed circumstances—no deepened conflict, no new confusion—to justify revisiting the issue now.

3. Even in the circuits that have yet to weigh in on the issue (the Second, Fourth, Fifth, Tenth, Eleventh and D.C.), district courts apply *Bristol-Myers Squibb* in FLSA collectives when jurisdiction rests on Rule 4(k)(1)(A). *See, e.g.*, *Kimble v. Opteon Appraisal, Inc.*, 712 F. Supp. 3d 379, 386-87 (W.D.N.Y. 2024); *Dahl v. Petroplex Acidizing, Inc.*, 2024 WL 22087 (D.N.M. Jan. 2, 2024); *Adams v. Absolute*

Consulting, Inc., 2023 WL 3138043 (W.D. Tex. Apr. 27, 2023); *Martinez v. Tyson Foods, Inc.*, 533 F.Supp.3d 386 (N.D. Tex. 2021); *Aiuto v. Publix Super Markets, Inc.*, 2020 WL 2039946 (N.D. Ga. Apr. 9, 2020).

Mr. Harrington identifies no contrary authority outside *Waters*. The near-consensus among trial courts further undermines any claim of disarray demanding this Court's intervention.

4. Even accepting *Waters* at face value, its outcome-determinative reasoning has produced no demonstrable conflict in results. The same FLSA claim filed in any other circuit would now be governed by *Canaday*, *Fischer*, *Vanegas*, *Vallone*, or *Harrington*—all to the same effect. A single outlier decision, now isolated and not firmly entrenched over a long time span, does not need this Court's review. There is no reason that the single outlier will not reverse itself in the face of its sister circuits' views.

II. The Decision Below Faithfully Applies Rule 4 And *Bristol-Myers Squibb*

The Ninth Circuit's analysis aligns with majority of other circuits' views because it is correct. It applies the straightforward text of Rule 4(k) and this Court's existing precedent.

1. Rule 4(k)(1)(A) expressly provides that serving a summons establishes personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." That text leaves no ambiguity: unless Congress enacts a broader nationwide-service statute, federal

courts are bound by the same territorial limitations as the forum state's courts.

This reading is not new. Courts have long recognized that Rule 4 borrows "the state's long-arm statute." *Fischer*, 42 F.4th at 374 (quotation omitted). Petitioners identify no statutory language in the FLSA that authorizes nationwide service of process or expands federal territorial reach, because none exists. *See e.g. id.* at 372 ("the FLSA does not authorize nationwide service of process.") FLSA § 216(b) creates a collective mechanism but says nothing about service of process and only speaks to jurisdiction by "requir[ing] that the court in which an action is brought be 'of competent jurisdiction.'" *Id.* at 385.

When a defendant is not subject to general jurisdiction in the forum, each opt-in plaintiff must independently show that their claim "arises out of or relate[s] to" the defendant's forum contacts. *Bristol-Myers Squibb*, 582 U.S. at 262. That rule applies equally whether the case proceeds in state court, or federal court under diversity or federal-question jurisdiction.

2. Mr. Harrington argues that *Bristol-Myers Squibb* involved state-law claims in state court and should not control federal-filed FLSA claims. But this Court articulated a constitutional principle of personal jurisdiction without any regard to the source of the claim: *no* court can exercise specific jurisdiction over a defendant regarding claims lacking a connection to the forum absent Congressional authorization. *Bristol-Myers Squibb*, 582 U.S. at 262–64. Rule 4(k)(1)(A) imports that same limitation into federal court practice when state service provides the basis for jurisdiction.

As the Sixth Circuit observed in *Canaday*, "Rule 4(k) . . . places territorial limits on a defendant's amenability to effective service of a summons by a federal district court, tying personal jurisdiction over a defendant to the host State's jurisdiction over it." *Canaday*, 9 F.4th at 399. The Ninth Circuit applied that uncontroversial principle. Pet. App. 11a–12a.

3. Mr. Harrington contends *Fuld* abrogates the reasoning of *Bristol-Myers* by holding that the Fourteenth Amendment does not limit federal-court jurisdiction. That is wrong. *Fuld* addressed whether Congress's enactment of the Anti-Terrorism Act validly authorized jurisdiction over foreign sovereign entities in federal court. The Court emphasized that the Fifth Amendment—not the Fourteenth—constrains federal courts when Congress has created a nationwide service-of-process provision. *Fuld*, 606 U.S. at 13–16.

Here Congress has not done so. The FLSA has no nationwide-service clause. Rule 4(k)(1)(A) therefore channels jurisdiction through state law, which triggers the Fourteenth Amendment's due-process limits. Nothing in *Fuld* unsettles that framework. The Ninth Circuit correctly held as much. Pet. App. 13a n.2.

4. Mr. Harrington argues the Ninth Circuit's decision frustrates Congress's intent to permit efficient collective actions. But policy cannot override statutory text. As this Court held in *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79 (2018), when it comes to the FLSA, "[r]ather than choose sides in a policy debate, this Court must apply the statute as written . . . ." *Id.* at 80. Congress' decision *not* to include language authorizing nationwide

service in FLSA actions is as deliberate a choice as the express provisions of the law. Congress knows how to provide for nationwide process. The courts cannot—in the name of what they deem sound public policy—override the decision not to provide for it.

The opt-in procedure Congress did provide remains available in each forum where a defendant is subject to jurisdiction. Employees in other states may file their own collectives there or in a forum with general jurisdiction over a defendant. The statute contemplates multiple actions or actions brought in the proper forum; it does not promise a single national forum in the state and circuit of plaintiff's choosing.

Nor will the majority view 'fragment' enforcement. The same alleged pay practice can be litigated in several jurisdictions or the appropriate forum of general jurisdiction, as happens routinely under Title VII and other federal statutes. Uniformity of substantive law, not of forum, ensures consistent results.

CONCLUSION

The Fourteenth Amendment's jurisdictional limits serve fundamental fairness. Applying those limits through Rule 4(k)(1)(A) ensures that defendants are not compelled to answer claims unconnected to the forum. That balance protects individual liberty while allowing Congress to expand jurisdiction when appropriate.

Mr. Harrington's contrary view would produce precisely the kind of 'gravitational pull' of nationwide litigation this Court has repeatedly declined to create

without clear congressional mandate. The 5-1 majority rule respects both constitutional structure and congressional prerogatives. This Court should deny the petition or, in the alternative, GVR with a *per curiam* decision rejecting *Waters* for the majority view.

Respectfully submitted,

James M. Coleman
Jason D. Friedman
Constangy, Brooks, Smith & Prophete LLP
12500 Fair Lakes Circle, Suite 300
Fairfax, VA 22033

Steven B. Katz
Counsel of Record
Constangy, Brooks, Smith & Prophete LLP
2029 Century Park East, Suite 1100
Los Angeles, CA 90067
(310) 909-7775
skatz@constangy.com

Counsel for Respondent