

No. 25-627

IN THE
Supreme Court of the United States

MACY'S INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.,

Respondents.

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

**SUPPLEMENTAL BRIEF
OF THE INTERNATIONAL UNION
OF OPERATING ENGINEERS,
STATIONARY ENGINEERS, LOCAL 39**

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SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8, respondent the International Union of Operating Engineers, Stationary Engineers, Local 39 (Local 39) files this supplemental brief to call the Court's attention to a recent filing by the National Labor Relations Board in a parallel case. The Board's filing reinforces two key points made in Local 39's brief in opposition: First, the petition's challenge to *Thryv, Inc.*, 372 NLRB No. 22 (2022), is entirely academic here because there is no possibility that Macy's will face liability under *Thryv*. Second, if the Court nonetheless agrees with the Government that a GVR is warranted, it should follow its usual practice and remand to the Ninth Circuit without dictating a further remand to the Board.

1. The Board's new filing was made in *International Brotherhood of Teamsters v. NLRB*, 2026 WL 1079297 (9th Cir. Apr. 21, 2026). In that case, as in this one, the Board found that the employer had committed unfair labor practices and entered an order including the Board's standard language providing relief for *Thryv* harms if and to the extent such harms are established in compliance proceedings. The Ninth Circuit enforced the order, rejecting the employer's challenges to *Thryv*. *Id.* at *10.

Yesterday, the Board filed a petition for panel rehearing "for the limited purpose of vacating as moot the portion of the Court's Judgment enforcing the Board's *Thryv* remedy." Board Pet. for Rehearing at 6, *Teamsters, supra* (Nos. 23-2081, 23-2302, and 23-2377) (Rehearing Pet.). The Board explained that, in preparing for compliance proceedings, its Regional Director had found that the affected employee "did not, in fact, suffer any 'direct or foreseeable pecuniary

harms” covered by *Thryv*—something that “the *Thryv* Board anticipated would be a common scenario.” *Id.* at 3-4. Because “no such harms were incurred,” the “Regional Director does not intend to allege or litigate any such harms in a compliance proceeding.” *Id.* at 4. Accordingly, the dispute over the *Thryv* portion of the Board’s order is “moot.” *Id.* And the Board sought to vacate the relevant portion of the Ninth Circuit’s judgment “to avoid any risk of further delay” in the enforcement of the rest of the Board’s order, which would remedy unlawful conduct that has been ongoing for years. *Id.* at 4-5.

2. The Board’s petition in *Teamsters* confirms that the dispute over *Thryv* relief in this case is “effectively moot.” Local 39 BIO 1. In *Teamsters*, the Board’s Regional Director did not seek *Thryv* relief because it “receiv[ed] evidence” that the relevant employee “ha[d] not suffered” any harms covered by *Thryv*. Rehearing Pet. Ex. B, at 2 (affidavit). So too here: Local 39 has already represented to the Regional Director, on behalf of the affected employees, that they did not suffer any *Thryv* harms. *See* Local 39 BIO App. 1a-2a. The Regional Director’s response to similar evidence in *Teamsters* further confirms what was already clear: There is no chance that Macy’s will face *Thryv* liability in this case—and thus no reason for this Court to grant plenary review or GVR. Local 39 BIO 18-19, 24.

3. If the Court nonetheless concludes that a GVR is warranted, the Board’s rehearing petition in *Teamsters* confirms that the Court should remand to the Ninth Circuit without requiring the Ninth Circuit to remand the whole case to the Board. As Local 39 explained, such a remand to the Board would be profoundly inequitable because it would perpetuate

Macy’s unlawful conduct and delay reinstatement for workers who have been illegally locked out of their jobs for more than five years. Local 39 BIO 24-26. The Board’s petition in *Teamsters* further illustrates why such a remand is unnecessary: If the Court simply remands to the Ninth Circuit, the Board could easily follow a similar procedure and promptly dispose of the moot *Thryv* issue in this case without any need for the delay associated with a full remand to the Board. And as the Board itself emphasized in *Teamsters*, such “further delay” in halting an ongoing violation of the National Labor Relations Act “would be inimical to the public policies outlined in the Act.” Rehearing Pet. 5.

CONCLUSION

For the foregoing reasons, and those set forth in Local 39’s brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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May 29, 2026