No. 25-834

In the
Supreme Court of the United States

ERIE INDEMNITY COMPANY,
Petitioner,

v.

TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT,
IN THEIR INDIVIDUAL CAPACITIES AND IN ANY REPRESENTATIVE CAPACITIES THEY MAY HAVE RELATING TO ERIE INSURANCE EXCHANGE
Respondents.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This case is an ideal candidate for this Court's review. The decision below opens an outcome-determinative circuit split that upends well-settled preclusion principles by distorting this Court's precedents. And, unless the Court grants review, the decision below will empower enterprising litigants to relitigate the same ongoing, continued conduct that was previously resolved by a final judgment.

This case puts that dangerous dynamic on full display. Respondents do not dispute that they press the same legal theory as before. *See* Pet.16-18. Nor do they dispute that this suit and its predecessors attack the same "nucleus of operative facts." *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 412 (2020); Pet.19. Instead, Respondents double down on the lower court's inflexible rule. Rather than identify any *new* allegedly unlawful conduct, they argue that they can slip preclusion by limiting their suit to two additional years—when Petitioner maintained the *same* Management Fee at the *same* 25% rate under the *same* supposed conflict. BIO.19.

That gamesmanship would not work outside the Third Circuit. Respondents try to wave away the Third Circuit's creation of a circuit split—and its break from this Court's holdings—by misreading conflicting precedents and ignoring the reality of this case. But those efforts fail. The Circuits now disagree on how to determine whether preclusion applies when plaintiffs challenge ongoing, continuing conduct that was adjudicated in an earlier action. And the Third Circuit relies on a mistaken view of this Court's

decisions. Only this Court's intervention can close that doctrinal divide and provide clear guidance to the lower courts.

Respondents' defense of the decision below fares no better. They fail to explain why courts should employ a wooden rule—contrary to this Court's direction in *Lucky Brand*—that bars preclusion anytime plaintiffs limit their challenge to a window of ongoing, continued conduct that postdates earlier suits. Nor would that make any sense. The "core value" underlying this Court's preclusion doctrines is the need to preserve "repose" after the "ordeal of litigation." 18 Wright & Miller, *Federal Practice and Procedure* § 4403 (2025). That need for "an end to litigation" should be "cordially regarded and enforced by the courts." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401-02 (1981). But the Third Circuit's rule "disregard[s] this salutary doctrine against prolonging strife," while inviting serial relitigation year after year. *Id.* at 402. That is not and should not be the law.

Respondents' effort to manufacture vehicle issues also falls flat. The decision below turned solely on an analysis of federal preclusion law. This Court can thus resolve the question presented without addressing other aspects of the AIA's relitigation exception. There is also no need to address whether Petitioner would suffer irreparable harm—although it indisputably would. And Respondents' other arguments fail.

In short, the Third Circuit's holding splits with multiple Circuits and distorts this Court's precedent. Allowing the decision below to stand will destroy finality and gut the promises of preclusion—as it did here. The Court should grant certiorari and reverse.

ARGUMENT

I. The Decision Below Conflicts With This Court's Precedent And Creates A Circuit Split.

Respondents wrongly contend that the decision below presents a "case-specific application of settled preclusion principles." BIO.2. Far from it. This Court has made clear that a previous court's judgment bars claims between the parties or their privies that "involve a common nucleus of operative facts." *Lucky Brand*, 590 U.S. at 412 (quotation marks omitted). Like the Third Circuit, Respondents conspicuously fail to even mention that rule. Instead, they defend the Third Circuit's novel approach, in which a claim involving any event postdating an earlier suit cannot be barred—even when part of a string of continuing conduct that was previously litigated to final judgment. That approach distorts this Court's preclusion doctrine. And it clashes with the decisions of four other Circuits.

Start with this Court's precedent. In *Lucky Brand*, this Court noted that "[c]laim preclusion *generally* does not bar claims that are predicated on events that postdate the filing of the initial complaint." 590 U.S. at 414 (emphasis added; quotation marks omitted). But the "reason" for that general rule is that "[e]vents that occur after the plaintiff files suit often give rise to new '[m]aterial operative facts.'" *Id.* at 415.

The decision below mangles that general observation into an inflexible rule. In the Third Circuit, Respondents did not dispute the District Court's finding that they failed to allege any change in

material operative facts from those raised in *Beltz v. Erie Indemnity Co.*, 279 F. Supp. 3d 569 (W.D. Pa. 2017), and *Ritz v. Erie Indemnity Co.*, 2019 WL 438086 (W.D. Pa. Feb. 4, 2019). *See* Pet.App.52-53. Nor have they offered any explanation to fill the void now. They never explain how the 2019 and 2020 Management Fee decisions rest on facts that differ in any respect from those already litigated to final judgment. That is because they cannot. All three suits advance the same legal theory to attack the same *unchanging* facts. *See* Pet.16-18. Without a change in "material operative facts" regarding the challenged conduct, the rationale for *Lucky Brand*'s general rule is "absent," and preclusion applies. *Denver Homeless Out Loud v. Denver,* 32 F.4th 1259, 1275 (10th Cir. 2022).

Respondents' efforts to wash away the circuit split similarly fail. The Eighth Circuit's decision in *Saylor v. Jeffreys*, 131 F.4th 864 (8th Cir. 2025), undisputedly applied a different test than the Third Circuit did here. Respondents thus cherry pick language from *Saylor*, arguing that the Eighth Circuit barred an inmate's later suit because he "allege[d] no new specific discriminatory events." BIO.15 (quoting *Saylor*, 131 F.4th at 867). But the events were not considered "new" by the court *because* the challenged conduct "continued and reoccurred." *Saylor*, 131 F.4th at 867. This case is no different. And the key point from *Saylor* is the one that Respondents studiously ignore: "The nucleus of operative facts remain[ed] the same." *Id.* Indeed, the Eighth Circuit considered and rejected the exact argument that Respondents advance here, holding that the plaintiff's assertion of "new facts" does not defeat preclusion unless "the second claim is based on subsequent legal or factual

events *that produce a different nucleus of operative facts*." *Id.* (emphasis added). Under this approach—which follows from *Lucky Brand*—Respondents' claims would have been precluded.

The decision below cannot be squared with the Tenth Circuit's decision in *Denver Homeless* either. Respondents try to cabin the logic of *Denver Homeless* to the preclusive effects of settlement agreements. BIO.16. But the Tenth Circuit relied on the settlement there as an *alternative* basis for preclusion, "[e]ven if the causes of action" were "distinct." 32 F.4th at 1274 n.14. Its *primary* holding applied this Court's preclusion principles as articulated in *Lucky Brand*. Because the City of Denver had engaged in a "continued" practice of sweeps that were at the core of the earlier litigation, "the reason behind" *Lucky Brand*'s general rule for post-complaint conduct fell away. 32 F.4th at 1275. The same is true here.

The decision below also conflicts with decisions from the Second and Seventh Circuits. *See Monahan v. New York City Dep't of Corr.*, 214 F.3d 275, 289-90 (2d Cir. 2000); *Adams v. City of Indianapolis*, 742 F.3d 720, 727 (7th Cir. 2014). Respondents concede that the *Monahan* and *Adams* courts rebuked as-applied challenges to government policies that "postdated" earlier suits. BIO.13-14. Respondents nevertheless maintain that their case is different because it can be decided "without assessing the legality of any conduct that was at issue" before. BIO.15.

But the Second and Seventh Circuits considered, and rejected, similar efforts to evade preclusion. Like the corrections officers in *Monahan*, Respondents alleged "new incidents" that fell "within the same

queue" as those raised in *Beltz* and *Ritz*. 214 F.3d at 290. And like the police officers in *Adams*, Respondents' suit "raise[d] the same core of factual allegations" as those earlier suits, even if the "challenged . . . decisions occurred at different times." *Adams*, 742 F.3d at 736; *see* Pet.16-18 (comparing the allegations raised in Respondents' complaint, the *Ritz* complaint, and the *Beltz* complaint). Respondents "cannot obscure the fact that [the] new" decisions they challenge "are part of the same series of transactions" as before. *Monahan*, 214 F.3d at 290. Their claim is therefore precluded.

The Third Circuit reached a different conclusion because it warped this Court's precedents and broke from the approach adopted by the Second, Seventh, Eighth, and Tenth Circuits. This Court's intervention is necessary to restore uniformity in the law.

II. The Decision Below Is Wrong And Undermines Preclusion Doctrines.

Left with no way to reconcile the Third Circuit's outlier decision with those of four other Circuits, Respondents attempt to defend the Third Circuit's side of the split. Their arguments are unavailing.

Respondents first suggest that the Third Circuit's rigid rule is "uncontroversial." BIO.12. But four other Circuits have rejected it, and this Court has never endorsed it. In *Lucky Brand*, the Court was careful *not* to bless the notion that the mere passage of time always allows plaintiffs to challenge ongoing continued conduct. Instead, it observed that claims predicated on later events are "often" allowed to proceed—because they "often" challenge new conduct

that falls outside of the operative facts of the previous judgment. *See* 590 U.S. at 415. But not always. A court still must assess whether the plaintiff's claim shares "a common nucleus of operative facts" with the earlier suit. *Id.* at 412 (citation omitted).

The Third Circuit transformed this Court's general observation into a facile, inflexible "new year, no preclusion" rule. In its view, because Respondents' complaint was limited to Management Fee settings "that occurred after the initial complaints in *Beltz* and *Ritz*," that alone defeated the "claim preclusive effect" of "the judgments in those cases." Pet.App.24. That simplistic logic eschews the critical analysis that this Court's preclusion doctrine has always required and that four other Circuits employ.

Seeking to bail out the Third Circuit's thin reasoning, Respondents contend that maintaining the Management Fee in 2019 and 2020 was not part of the same transaction or occurrence as the operative facts litigated in *Beltz* and *Ritz*. *See* BIO.18-19. But the sole case Respondents rely on for this position, *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 327-28 (1955), is off-point. The second suit there pled "new antitrust violations" and "a *substantial change* in the scope of the defendants' alleged monopoly." *Id.* at 328 (emphasis added). Here, by contrast, Respondents allege "only continuing violations of the type involved in [*Beltz* and *Ritz*] and there adjudicated." *Engelhardt v. Bell & Howell Co.*, 327 F.2d 30, 36 (8th Cir. 1964) (distinguishing *Lawlor*). The Subscriber's Agreement, which authorizes Indemnity to receive a 25% Management Fee, did not change. Pet.App.52. The structure and oversight of the reciprocal insurance

exchange did not change. Pet.App.52-53. Respondents' legal theory did not change. Pet.App.51-53. Nor did anything else of consequence to Respondents' complaint. Pet.16-18.

Thus, Respondents attack "part of a series of connected transactions beginning with Indemnity's original decision to set the Management Fee at 25%" in 2007. Pet.App.53. Claim preclusion has long applied in that setting. *See* Restatement (Second) of Judgments § 24(1) (1982) (explaining that preclusion applies "with respect to all or any part of the transaction, or series of connected transactions, out of which the [prior] action arose"). Any contrary view would greenlight endless relitigation. And this case shows how. The gravamen of Respondents' claim remained the same from *Beltz*, to *Ritz*, to this suit. That is because the claim rests on the *unchanged* facts about the supposed conflict created by Petitioner's structure. Yet, though the facts and legal theory underlying that claim remained constant each year the Management Fee was set, the Third Circuit has blessed an annual tradition of new lawsuits challenging those same operative facts.

The Third Circuit's additional error on issue preclusion places the problem in stark relief. As explained in the Petition, a prior federal judgment has *already* held Respondents' cause of action to be claim-precluded. Pet.21. The *Ritz* plaintiff challenged the ongoing setting of the Management Fee in years post-dating *Beltz,* urged that the new setting of fees were different transactions, and argued that they could not have been included in the earlier suit. *See* Pet.21. The *Ritz* court rejected that view and held that the

plaintiff—with whom Respondents are undisputedly in privity—was barred by claim preclusion because her claim was based on the same operative facts as *Beltz*. *See Ritz v. Erie Indem. Co.*, 2019 WL 2090511, at *2 (W.D. Pa. May 13, 2019). Respondents assert the same meritless theory in their claim here.

Respondents barely defend the Third Circuit's reasoning on this front. They instead try to kick up dust, suggesting that the "record amply supports the Third Circuit's holding on issue preclusion." BIO.21. But the record speaks for itself—and the Third Circuit did not engage with it at all. Indeed, the court failed to articulate any "significant changes in controlling facts"—that is, how the new years in this case were any different from the new years in *Ritz*. *Montana v. United States*, 440 U.S. 147, 157 (1979).

The claims here are thus doubly precluded. They are claim-precluded by *Beltz* and *Ritz*. And they are issue-precluded by *Ritz*. This Court should grant certiorari to reject the lower court's double distortion of well-settled preclusion law.

III. The Question Presented Is Exceptionally Important, And This Is An Excellent Vehicle To Resolve It.

A. Respondents also fail to seriously grapple with the vast consequences of the Third Circuit's decision. As the Petition explains, the lower court's novel and categorical rule thwarts the "conclusive resolution of disputes" that preclusion is supposed to provide. *Montana*, 440 U.S. at 153. And it is neither consistent with "common sense" nor "public policy." *Federated Dep't Stores*, 452 U.S. at 402 (citation omitted).

On the contrary, enterprising plaintiffs who obtain unfavorable judgments will seek refuge in the Third Circuit and its flawed reasoning. A defendant whose conduct is ongoing—whether a recurring business practice, a continuing policy, or a regularly repeated transaction—now faces the prospect of being endlessly haled into court, no matter how many previous judgments have been entered in its favor. *See* Pet.24-25. Repeat plaintiffs will need only to win once, while defendants will be forced to maintain an undefeated record. That untenable dynamic destroys finality and will dramatically alter the settlement calculus by making true peace unattainable.

Respondents retort that the doctrine of issue preclusion will provide a backstop to prevent serial relitigation. BIO.22. But that proposal provides no comfort. It did not help here—even where the prior judgment concerned preclusion. That is because the Third Circuit's decision on issue preclusion adopted the same "new year, no preclusion" rule as it did for claim preclusion, holding that the "issues are not identical" between suits so long as plaintiffs allege new years of ongoing, continuing conduct. Pet.App.26.

Respondents then suggest that reversal would "confer carte blanche" on defendants to continue conduct "indefinitely into the future without fear of legal consequence." BIO.22. That is wrong too. Claim preclusion "do[es] not cement the *status quo* in perpetuity" where plaintiffs actually plead "changed circumstances" that alter the controlling facts. *Monahan*, 214 F.3d at 290. Despite repeated opportunities to do so, Respondents simply never pointed to any change, except the passing of years.

Thus, accepting their position would grant plaintiffs "carte blanche" to pursue the same failed claims based on the same unchanged operative facts. That is precisely what claim preclusion is designed to prevent.

B. Unable to dismiss the critical importance of the question presented, Respondents assert that this case is not the proper vehicle to take up the issue. BIO.23-25. That effort misses the mark too.

First, Respondents note that Petitioner seeks relief under the All Writs Act and the AIA's relitigation exception. BIO.23-24. But the decision below turned solely on whether standard preclusion principles barred Respondents' complaint. Pet.App.22-27. That pure question of law is thus squarely presented. And this Court routinely takes cases to resolve "threshold" legal issues, leaving it to the lower court to address "in the first instance" other issues that its threshold "error prevented [it] from addressing." *City of Austin v. Reagan Nat'l Advertising of Austin, LLC*, 596 U.S. 61, 76-77 (2022) (quoting *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012)).

Second, Respondents assert that Petitioner offered "no case-specific evidence of irreparable harm." BIO.24. But that is both wrong and beside the point. Respondents stipulated below that "[f]urther proceedings in the State Court Action" would cause Indemnity to "expend material amounts of time, resources, and costs." Dist.Ct.Dkt.69 at 8. And every Circuit that has had occasion to affirm a relitigation exception injunction has held that "[r]equiring [a party] to relitigate in . . . state court" claims or issues that were "previously decided by [a federal] Court

constitutes an irreparable harm" by itself. *SDDS, Inc. v. South Dakota*, 97 F.3d 1030, 1041 (8th Cir. 1996).

That is because the irreparable harm of being "forced to defend in yet another forum" is "obvious." *Terlecky v. Hurd*, 133 F.3d 377, 381 (6th Cir. 1997). Relitigation results in unrecoverable "costs and expenses, including attorneys' fees," and it deprives the party of "the benefits of the judgments in its favor," including assurance of the judgment's finality. *Dow Agrosciences, LLC v. Bates*, 2003 WL 22660741, at *18 (N.D. Tex. Oct. 14, 2003). Accordingly, "no independent demonstration of irreparable harm or lack of alternative remedies is necessary to win an injunction under the relitigation exception." *Ballenger v. Mobil Oil Corp.*, 138 F. App'x 615, 622 (5th Cir. 2005).

Reversing the Third Circuit's preclusion ruling would thus all but determine the outcome of this case.

* * *

Respondents offer no good reason to deny certiorari. Their efforts to obscure the Third Circuit's creation of a circuit split fail. Their reasons for excusing the Third Circuit's errors are unpersuasive. And their attempts to muddle the case are unavailing. This Court should grant review and reverse.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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