No. 26-1

In the
Supreme Court of the United States

SUNOCO, INC. (R&M); SUNOCO PARTNERS MARKETING & TERMINALS, L.P.,

Petitioners,

v.

PERRY CLINE, on behalf of himself and all others similarly situated,

Respondent.

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

REPLY BRIEF FOR PETITIONERS

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September 9, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
REPLY BRIEF 1
I. The Tenth Circuit's Decision Flouts Rule 23, Article III, And This Court's Precedent 2
II. The Tenth Circuit's Decision Exacerbates Two Circuit Splits 6
A. The Tenth Circuit Joined the Wrong Side of a Deep Ascertainability Split 6
B. The Decision Below Exacerbates the Circuit Split Over Whether a Class May Include Members Who Lack Article III Standing 8
III. This Case Is An Excellent Vehicle To Resolve The Important Issues Presented 9
CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Ariz. Christian Sch. Tuition Org. v. Winn,
563 U.S. 125 (2011).. 11

Briseno v. ConAgra Foods, Inc.,
844 F.3d 1121 (9th Cir. 2017).................................. 7

Cherry v. Dometic Corp.,
986 F.3d 1296 (11th Cir. 2021)................................ 7

DaimlerChrysler Corp. v. Cuno,
547 U.S. 332 (2006).. 5

Freund v. McDonough,
114 F.4th 1371 (Fed. Cir. 2024) 7

In re Niaspan Antitrust Litig.,
67 F.4th 118 (3d Cir. 2023)...................................... 7

Kohen v. Pac. Inv. Mgmt. Co.,
571 F.3d 672 (7th Cir. 2009)................................. 11

Mullins v. Direct Digital, LLC,
795 F.3d 654 (7th Cir. 2015).................................... 7

Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,
559 U.S. 393 (2010).. 4

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016).. 11

TransUnion v. Ramirez,
594 U.S. 413 (2021).. 11

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011).. 11

Other Authority

Ellen P. Aprill, *Inadvertence and the Internal Revenue Code: Federal Tax Consequences of State Unclaimed Property Laws*, 62 U. Pitt. L. Rev. 123 (2000) 4

REPLY BRIEF

Respondent does not deny that the courts below entered and affirmed a class-action judgment ordering Sunoco to pay more than $100 million in damages to a class that includes thousands of "members" who remain unidentified to this day. Respondent likewise does not dispute that the bulk of that sum is destined for state unclaimed-property funds rather than real people. And respondent does not dispute that the questions the petition raises regarding what a class representative must demonstrate to properly sustain a damages class action under Rule 23 and Article III have divided the circuits for the better part of a decade. Instead, he asks this Court to leave these important issues unresolved on the basis of (to use his words) a "false narrative." BIO.1. But the record in this fully tried case speaks for itself—and it confirms that all the concerns class-action defendants have been raising before this Court for years do in fact come home to roost when courts simply take plaintiffs' word for it at the certification stage. The district court here did just that, blessing certification despite a cloud of obscurity, perhaps in the hope that the parties would settle and the thorny Rule 23 and Article III issues would disappear. Instead, they produced a massive money judgment that leaves Sunoco forced to pay tens of millions of dollars "to no one"—or, even worse, perhaps to "someone not entitled to recover." NAM.Br.6. If this Court does not step in, the message to the plaintiffs' bar will be unmistakable: Courts need not take Rule 23's guardrails seriously. To bring class actions back in line with bedrock principles and resolve persistent divisions among the circuits, this Court should grant the petition and reverse.

I. The Tenth Circuit's Decision Flouts Rule 23, Article III, And This Court's Precedent.

This Court has repeatedly admonished that the class-action mechanism may not be used to bypass the strictures of Article III or due process. "But as this case shows, not all Circuits have upheld their obligation to ensure that class actions are properly tailored to resolving real disputes for real people." NAM.Br.5.

The district court certified, and the Tenth Circuit affirmed, a class consisting of any well interest for which Sunoco had set aside proceeds from the sale of oil from a well without also setting aside interest, even if those proceeds had never been paid to anyone, and instead were sent to state unclaimed-property funds (where they remain to this day)—which Sunoco did only when, but because, it could not determine to whom the well interest belonged. *See* Pet.App.15. As a percentage of well interests in Sunoco's portfolio, those with uncertain identities and/or locations accounted for a tiny fraction: They were only a subset of the approximately one percent of payments Sunoco made late. *See* Pet.App.104. But as a percentage of the judgment, unidentified interest-owners account for a majority: almost two-thirds of the $100 million damages award. D.Ct.Dkt.268 at 573-75. A federal court thus has ordered Sunoco to pay tens of millions of dollars to theoretical plaintiffs who may or may not have standing or a legal entitlement to interest under Oklahoma's Production Revenue Standards Act ("PRSA"), because respondent failed to supply any means of determining to whom those well interests belong. *See* Pet.18-25. Neither Rule 23 nor Article III countenances that result.

Rather than confront these realities, respondent tries to muddy the waters. He claims that, because Sunoco "allocate[d] specific amounts of proceeds" for each well interest, "it necessarily follows that [Sunoco] can identify" the rightful owners of those proceeds "and pay the interest it owes to them in the same way." BIO.21; *see also* BIO.5. But the "way" Sunoco paid the proceeds associated with many of those well interests was by sending them to unclaimed-property funds—after having segregated and held onto them for years, as required by state law—precisely because Sunoco could not identify or locate the rightful owner. Pet.App.110; Pet.10-11. Moreover, Sunoco sent a substantial amount of the money associated with unknown well-interest owners to unclaimed-property accounts in Texas that were not allocated to anything but an account number, which it did because it had so little information that it could not even make a guess as to who was entitled to the associated proceeds. Pet.App.15; D.Ct.Dkt.172-3 at 3.

What respondent is really proposing, then, is to simply pay all interest associated with unknown class members into unclaimed-property funds—which just confirms that he is far more interested in making Sunoco pay (with his lawyers taking a healthy cut) than in ensuring that the massive damages award he secured finds its way to actual class members. And respondent cannot simply wish away the fact that approximately two-thirds of the damages he secured are likely to languish indefinitely in state-unclaimed property funds. *Contra, e.g.*, BIO.9, 21-22. Whether money sent to those funds escheats to the states, functions as a "trust for unknown class members," BIO.33, is a de facto "form of *cy pres* relief," NAM.Br.17, or simply sits in the funds indeterminably as none of the above, the reality is that no class member is likely to ever see them. *See* Ellen P. Aprill, *Inadvertence and the Internal Revenue Code: Federal Tax Consequences of State Unclaimed Property Laws*, 62 U. Pitt. L. Rev. 123, 125 n.9 (2000) (noting that only 4% of unclaimed property nationwide is ever successfully claimed).

Implicitly recognizing as much, respondent claims that because Sunoco's business records establish the *well interests* to which the company owed oil-sale proceeds, it does not matter that the *people* associated with those well interests are unidentified and unknown still to this day. *See, e.g.*, BIO.16-17. But that underscores how egregiously the lower courts (at respondent's urging) allowed this class action to jump the tracks. People—not well interests—have standing. If respondent had filed this lawsuit on behalf of 20 well interests instead of tens of thousands, but could identify the owners of only five of those well interests, no one would seriously think that Sunoco could be forced to pay a judgment for the benefit of the 15 well interests with no one attached to them. After all, a court cannot even determine whether a plaintiff has standing to recover damages without knowing who the plaintiff is. The result cannot be different just because respondent sued on behalf of tens of thousands of unidentified plaintiffs rather than a few. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (to comply with §2072(b) and due process, Rule 23 must do no more than "merely enable[] a federal court to adjudicate claims of multiple parties at once"). Neither Article III nor Rule 23 brooks any "too big to fail" exception.

Rather than confront that reality, respondent returns to his mantra of blaming Sunoco for not having at the ready the records respondent needed to prove his case. But the whole reason this class action exists is because Sunoco could not always identify or locate a well interest's owner. If Sunoco had that information, it would have timely paid the owners, and no interest dispute would have arisen—as happened 99% of the time. What respondent is really claiming, then, is that Sunoco is to blame for not keeping records of information it did not have. That gets matters backward. If respondent wants to secure damages for owners of tens of thousands of well interests, it is *his* job, not Sunoco's, to ensure that his proposed class members can actually be identified. Respondent's failure to do so not only defied Rule 23, but raised a very real risk that this proceeding is not "a proper case or controversy" under Article III, and that the federal courts "have no business deciding it." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341-42 (2006).

Respondent complains that, if Sunoco is correct, then "class representatives" will be forced to "identify all of the class members [just] to secure class certification." BIO.19; *see also* BIO.20. To be sure, Sunoco and other class-action defendants would welcome such a rule. But the dispute here is not over whether a class representative must identify at the outset the class members on whose behalf he seeks to secure money damages; the question here is whether a court can enter a judgment at the back-end actually awarding money damages to plaintiffs that the class representative never identified and likely never will. The Tenth Circuit held that neither Rule 23 nor Article III stand in the way of such a judgment. This Court's cases and the fundamental principles they reflect require otherwise.

Ultimately, respondent is right about one thing: The decision below "speaks for itself." BIO.16. And what it says could not be less consistent with this Court's precedent. *See* Pet.18-25. "Paying damages to no one is not justice." NAM.Br.17. Nor is it consistent with Rule 23, Article III, or due process. Yet that is exactly what the district court ordered and the Tenth Circuit affirmed, at least as to two-thirds of the nine-figure judgment. That result flouts Sunoco's rights and this Court's cases. The Court should grant review and set things straight.

II. The Tenth Circuit's Decision Exacerbates Two Circuit Splits.

In addition to defying this Court's teachings, the decision below deepened two circuit splits that lower courts have acknowledged necessitate this Court's resolution. This Court should resolve those divisions and confirm that classes cannot be certified, much less awarded $100 million, when the class supplies no administratively feasible mechanism for ensuring that all members are identifiable and have the requisite standing to recover damages.

A. The Tenth Circuit Joined the Wrong Side of a Deep Ascertainability Split.

Respondent does not deny that the decision below deepens a split regarding ascertainability that has divided the courts of appeals for the better part of a decade. He instead attempts to downplay that split, describing it as "shallow" and "a semantic issue instead of a substantive division." BIO.24-26. The circuits that comprise the split—and have been asking this Court to resolve it—would be quite surprised to hear that. The Eleventh Circuit highlighted the depth of the split in 2021 when eight circuits had taken a stance. *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021) (collecting cases). With the Eleventh, Federal, and Tenth Circuits having since weighed in, *see id.*; *Freund v. McDonough*, 114 F.4th 1371, 1377-78 (Fed. Cir. 2024); Pet.App.40-42, nearly every circuit (11 in total) has now spoken on the issue. Splits do not get much deeper than that.

Nor is the division merely "semantic." BIO.26. The Eleventh Circuit has described administrative feasibility as "[o]ne of the most hotly contested issues in class action practice." *Cherry*, 986 F.3d at 1301. And based on their extended and spirited ventilation of the issue over the years, other circuits would likely concur with that assessment. *See, e.g.*, *In re Niaspan Antitrust Litig.*, 67 F.4th 118, 132-34 (3d Cir. 2023); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1123-33 (9th Cir. 2017), *abrogated on other grounds by TransUnion v. Ramirez*, 594 U.S. 413 (2021); *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 657-72 (7th Cir. 2015). Indeed, if this were really just a matter of different courts using different words to say the same thing, then respondent would not have felt the need to devote six pages of his brief to an excursus on the substance of the issue dividing them. *See* BIO.26-32.

The decade-long inter-circuit discussion that respondent references at length, *see* BIO.24-32, also gives the lie to his claim that the administrative-feasibility issue has not been sufficiently ventilated, BIO.22-23. "[J]udges and litigants have been seeking clarity on ascertainability for years," and "this Court is the only body with the authority to resolve this Circuit split and provide a uniform rule on ascertainability." NAM.Br.8-9. It is time to do so.

Respondent fares no better in claiming that the split is not implicated here because the district court found that the class was administratively feasible. *See* BIO.19-22. That just confirms how far the long side of the split has strayed from Rule 23 and the due-process rights it protects. Tens of millions of dollars are bound to languish in unclaimed-property funds because respondent never provided any means of identifying thousands of his putative class members. Relieving respondent of his obligation to do so rendered the class "administratively feasible" only in the sense that it paved the way to a massive damages award payable to no one (except his lawyers, who will gladly accept a sizable percentage of the inflated whole).

B. The Decision Below Exacerbates the Circuit Split Over Whether a Class May Include Members Who Lack Article III Standing.

Respondent admits that courts are deeply divided on how to deal with absent class members' Article III standing. *See* BIO.32-33. He could hardly do otherwise when this Court has twice granted certiorari on the issue yet left it unresolved.

Respondent instead tries to downplay the split's import here. But he can do so only by resorting to the "false premise[]," BIO.1, that he proved that all members of his class have standing. *See* BIO.33. That is incorrect for all the reasons already discussed. *See supra* pp.2-6; Pet.23-25. Indeed, respondent's suggestion that "each class member … suffered an injury-in-fact traceable to" Sunoco comes in the same sentence as a concession that there *still* are "unknown class members." BIO.33. Without knowing who respondent claims owns a well interest and is entitled to PRSA interest, no one can know for certain whether the judgment Sunoco has been ordered to pay benefits parties without standing.

The simple truth is that "[t]he trial court certified (and the Tenth Circuit affirmed) a class in which large numbers of members ha[ve] not asserted a valid claim and will never assert a valid claim—in large part because these plaintiffs are unascertainable." NAM.Br.13. In doing so, the Tenth Circuit joined (and deepened) the wrong side of a pervasive circuit split. *See* Pet.30-32.

III. This Case Is An Excellent Vehicle To Resolve The Important Issues Presented.

Unable to defend the decision below on the merits or avoid the reality that the Tenth Circuit's opinion exacerbates two already-deep circuit splits, respondent asserts a hodgepodge of vehicle problems. BIO.11-15, 19-23. None is availing.

Respondent begins by claiming that, because Sunoco waited until the district court entered, and the Tenth Circuit affirmed, and amended final judgment before seeking this Court's review, its petition is somehow untimely. BIO.11-15. But that argument is based on the false premise that Sunoco is "seeking review of the final judgment entered on November 17, 2025." BIO.11. Sunoco is not. As the petition explains, Sunoco has petitioned for review of the Tenth Circuit's March 30, 2026, decision affirming the final judgment issued on February 23, 2026, after the Tenth Circuit partially vacated the district court's earlier judgment. Pet.4. And, as respondent admits, "this Court has the 'authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals.'" BIO.15. To be sure, the Tenth Circuit's earlier decision ultimately compelled affirmance of the amended final judgment. But the remand certainly *could* have produced issues that might necessitate another appeal. (For instance, the Tenth Circuit did not resolve potential pre- and post-judgment interest; that issue did not necessitate appeal because the parties amicably resolved it.) Sunoco was thus free to wait until it was sure it had a truly *final* judgment in hand before seeking this Court's review.[1]

Respondent's other vehicle objection gets things exactly backwards. Respondent complains that the facts of this case are unlike the facts of other class actions. But that is true of all manner of class-action

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[1] It is hard to fault Sunoco for doing so given the unusual history of this case, as Sunoco spent years in appellate purgatory owing to a dispute about whether a final judgment had issued. *See* Pet.15-16. And contrary to respondent's suggestions (at 14), waiting the couple of months it took to secure an affirmed final judgment did not prejudice the class, as Sunoco paid the judgment in full months ago.

petitions, as class actions come in all shapes and sizes. And the one thing that really does make this case relatively unusual is that it was tried to final judgment. But that makes it a particularly *good* vehicle, since this was essentially the test case for what happens when district courts take a certify-now-ask-questions-later approach: The questions never get answered. And while the rulings here were particularly egregious, Sunoco will not be the only wronged defendant if even the most egregious violations of class-action rules go uncorrected by this Court. *See* NAM.Br.14-16 (noting the danger of "speculative litigation" to manufacturers and the trend of increasing costs of class-action litigation).

Indeed, several courts have acknowledged the danger class actions already pose for defendants, *see, e.g.*, *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 677-68 (7th Cir. 2009), and this Court has repeatedly acknowledged the need to keep sprawling classes in check, *see, e.g.*, *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), *TransUnion*, 594 U.S. 413. That is why it has instructed lower courts to "be more careful to insist on the formal rules of standing, not less so," *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011), and to conduct a "rigorous analysis" of the Rule 23 certification criteria, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011). The Tenth Circuit ignored both admonitions here, and the result was an unjust $100 million damages award and two deepened splits at the critical juncture of Rule 23 and Article III.

In short, the issues presented are important not just to Sunoco, but to all class-action defendants, and to the proper conducting of class actions writ large.

The lower courts are hopelessly divided, and both they and litigants need clarity that can only come from this Court. This Court should step in and provide it.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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