No. 26-183

In the Supreme Court of the United States

UNITED AIRLINES, INC., *Petitioner,*

v.

GENISE KINCANNON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether it was a *per se* abuse of discretion for the district court to certify a narrow Rule 23(b)(3) class of United Airlines' customer-facing employees with sincere religious objections to its uniform COVID-19 vaccine mandate who were uniformly "accommodated" by being placed on indefinite unpaid leave.

PARTIES TO THE PROCEEDING

Petitioner United Airlines, Inc. was the appellant/cross-appellee in the Fifth Circuit and the defendant in the district court.

Respondents Genise Kincannon and David Sambrano were the appellees/cross-appellants in the Fifth Circuit and plaintiffs in the district court.

Respondents David Castillo, Kimberly Hamilton, Debra Jennefer Thal Jonas, Jarrad Rains, Alyse Medlin, Charles Burk, and Seth Turnbough were appellees in the Fifth Circuit and plaintiffs in the district court.

CORPORATE DISCLOSURE STATEMENT

Respondents are individual persons, and no corporate disclosure is required.

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INTRODUCTION

In the decision below, the Fifth Circuit applied settled Rule 23 principles to a narrow class of Title VII religious-accommodation claimants. That decision faithfully applied *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338 (2011), *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), and *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U.S. 442 (2016). And, because the district court remains free to alter its certification order before final judgment, this case is an especially poor vehicle for certiorari review. Fed. R. Civ. P. 23(c)(1)(C).

United itself treated these employees as a class: It used one process for religious accommodations, granted each class member's request, and put every customer-facing employee, including pilots and flight attendants, on the same "accommodation"—indefinite unpaid leave. The district court did not abuse its discretion in similarly treating these employees as a class.

The class challenges United's uniform failure to *reasonably* accommodate employees with religious objections to its vaccine mandate—putting them, as the Court of Appeals previously found, to "an impossible choice for plaintiffs who want to remain faithful but must put food on the table." *Sambrano* v. *United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *9 (5th Cir. Feb. 17, 2022) (per curiam). And the evidence of United's discrimination is common across the class: United forced all class members into an unreasonable accommodation and subjected all of them to the same unlawful threats. Indeed, United

CEO Scott Kirby specifically warned that anyone who "all the sudden decid[ed], 'I'm really religious'" would be "putting [their] job on the line" by requesting an accommodation. *Id.* at *1. And United made sure class members were pressured at home, sending threatening postcards to each class member so that family members would also see that the employee could lose income by not acquiescing to United's mandate. ROA.6404.

Despite those threats, thousands of United employees requested religious accommodations, and United accepted the religious sincerity of nearly all of them. Pet.4. But after granting the requests, United offered only one accommodation: indefinite unpaid leave until the "pandemic meaningfully recede[d]," App.3a—a period United guessed "could be another '72 months' or so," *Sambrano*, 2022 WL 486610, at *2.

After extensive class discovery, the district court certified a Rule 23(b)(3) class of just those employees. The Fifth Circuit unanimously affirmed, holding that the district court did not abuse its discretion in finding that common questions predominate and that a class action is superior. App.37a. Judge Willett expressed "reservations" about trial management but still found no abuse of discretion because the district court can resolve those issues down "the road." App.43a, 50a. When United sought rehearing en banc, not a single judge called for a response or a vote. App.56a.

United now seeks a categorical rule that Title VII religious-accommodation claims cannot be certified. United seems to concede that the district court's common questions are "*capable* of classwide resolution," *Wal-Mart*, 564 U.S. at 350 (emphasis added), but argues that is not enough because classwide resolution is not *guaranteed*. No court has required so stringent a rule. And this Court has held the opposite: Class treatment remains appropriate even if a defendant "might attempt to pick off the occasional class member *** through individualized rebuttal." *Halliburton*, 573 U.S. at 276. The Fifth Circuit correctly refused to be the first court to "hinder the vindication of religious freedom" with a per se bar on such claims. App.27a. This Court should not be the first either.

STATEMENT

A. Factual Background

In early 2020, when COVID-19 began spreading in the United States, United implemented various mitigation measures to protect its workforce. ROA.6775, 6094.[1] With those precautions in place, United repeatedly stated that it considered its employees and passengers safe. ROA.6775-6778. In fact, United's CEO Scott Kirby told Congress that with United's air filtration systems in place, sitting next to a passenger in a United plane was equivalent to sitting 15 feet from the person in a typical building.[2] Indeed, United prided itself on the fact that it was "virtually impossible" to catch COVID-19 in a United plane. ROA.12284.

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[1] Fifth Circuit record citations appear as ROA.[page number].

[2] *Oversight of the U.S. Airline Industry: Hearing Before the S. Comm. on Com., Sci. & Transp.*, 117th Cong. (2021) (testimony of Scott Kirby at 55:56), https://tinyurl.com/yeyneupe.

1. By early 2021, however, Kirby wanted more than safe planes. He wanted the marketing benefit of being the first "company that requires vaccines." ROA.6071, 6361, 6470. Even after the company official monitoring the data said he "would not advocate for a mandate," ROA.6364, 6008-6009, Kirby insisted United "be prepared to be an early mover." ROA.6013.

Just two weeks later, United announced that all U.S.-based United employees would have to receive a COVID-19 vaccine.[3] ROA.6094. United's mandate was absolute and uniform. It offered no alternative for periodic testing, mask wearing, or social distancing, even for employees who had already recovered from COVID-19. And this absolute mandate was imposed despite United's airplanes being—as Kirby explained—some of the safest places in the world as to disease transmission.

2. When introducing the mandate, Kirby warned employees to "be very careful" about requesting accommodations because "few people" would "get through the medical and religious exemption process" and, even then, such individuals would be "putting [their] job on the line." ROA.134. Kirby derisively described such employees as "all [of a] sudden decid[ing], 'I'm really religious.'" *Ibid.*

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[3] While United's mandate applied to all U.S.-based employees, it did not apply to: (1) passengers; (2) employees from other airlines who flew in United jumpseats; (3) international United employees; (4) Montana-based United employees; and (5) United's vendors and contractors. ROA.6096-6097, 6779, 6782-6784, 6755-6756, 6770-6771, 6793-6794. These individuals interacted extensively with the employees subject to the mandate. ROA.6807-6810, 6779-6785.

For those who requested a religious accommodation, United made the process intentionally burdensome. Each employee had to meet three-day document deadlines, often over holidays, that included providing a pastoral letter on "church letterhead" and answering probing questions about past religious conduct to ensure the employees had always complied perfectly with their stated beliefs. ROA.6163-6164, 6337-6339, 6557, 6231-6233, 6144.

After United's HR employees expressed concerns about this process, see ROA.6760-6761, 6533-6534, United abandoned some of the most stringent measures and adopted a uniform formula for evaluating religious accommodation requests: If an employee articulated a religious reason for not receiving the vaccine and provided an "[a]ttestation from someone the employee knows first hand," United would conclude the employee had a "[d]eeply held religious belief" and would approve the request. ROA.6056, 6344-6345, 6556-6557.

3. But approval did not mean receipt of a real accommodation, and United made no individualized inquiry into job duties to allow individualized accommodations. Instead, it offered every requester the same thing: indefinite unpaid leave until the pandemic "meaningfully recede[d]"—up to *six years*. ROA.6079, 6110, 6243, 6370, 6565-6566, 6025; *Sambrano*, 2022 WL 486610, at *2. And while United said employees on unpaid leave could apply for other United jobs, this was a smokescreen. In practice, applications for alternative jobs were immediately denied because the employee was unvaccinated—or the job required the employee to "giv[e] up [her] pilot

position forever." ROA.11884-11886, 11892 (same for flight attendants).

B. Procedural History

Plaintiffs sued seeking injunctive and monetary relief for United's failure to reasonably accommodate religious objectors. Once sued, United offered a masking-and-testing alternative to "non-customer-facing" employees, App.3a-4a, but left customer-facing employees—mostly pilots and flight attendants—on indefinite unpaid leave. App.4a.

Plaintiffs first sought a preliminary injunction enjoining United from placing them on indefinite unpaid leave. The district court denied that motion, *Sambrano* v. *United Airlines, Inc.*, 570 F. Supp. 3d 409 (N.D. Tex. 2021), but the Fifth Circuit reversed and held that United employees faced irreparable harm when forced to decide between violating their faith and forgoing their income. *Sambrano*, 2022 WL 486610.[4]

1. On remand, the parties engaged in extensive class discovery. After that, Plaintiffs moved for certification of three distinct classes. The district court certified one class under Rule 23(b)(3) consisting of "all employees United deemed 'customer-facing' who received an accommodation due to a sincerely held religious belief and who were put on unpaid leave." App.61a.

The court found commonality because the unpaid-leave employees "suffered the same injury" and sincerity, reasonableness, and undue hardship could

[4] Within days of that loss, United suddenly determined that the pandemic had "meaningfully receded."

be resolved by common evidence. App.77a. As to sincerity, the court concluded that it could be shown classwide from each member's "words and actions," which included their religious objections, third-party attestations, and decisions to accept unpaid leave. App.81a-82a. As to reasonableness, the district court emphasized that, "because the accommodation in this case is the same across the proposed class, the only factual differences between individual class members are questions of damages" and are not "relevant to the reasonableness of the unpaid leave accommodation." App.85a-86a. And undue hardship was common because "the question of whether United would have incurred a substantial burden by paying for some employees' COVID-19 tests" could and would be determined by common evidence. App.87a.

Because sincerity, reasonableness, and undue hardship could be determined classwide, the district court concluded that the proposed unpaid-leave class satisfied Rule 23(b)(3) predominance as to all liability issues. App.102a-103a. The court also concluded that Plaintiffs could establish predominance as to damages because Plaintiffs' proposed damages model rendered damages "easily susceptible to mathematical calculation" using a "lost income stream calculation that is based on an average wage rate" of each individual class member—a method that is "well-established in the Fifth Circuit." App.104a.

Superiority followed. Because "[a]ll class members suffered the same injury, were granted the same accommodation, and assert the same cause of action[, t]he same evidence will support each class members' prima facie case of religious discrimination, and the reasonableness of the accommodation and undue hardship defense can be determined class-wide." App.109a. Thus, "one of the primary rationales for class treatment—judicial efficiency—is well-served here." App.108a. Because the proposed class "consists of hundreds of employees who requested religious accommodations and were put on indefinite unpaid leave, *** [r]equiring courts to manage hundreds of lawsuits addressing the same questions and evidence makes little sense." *Ibid.*

The district court excluded those with claims under the Americans with Disabilities Act from the certified class. App.83a-84a. The district court also denied Plaintiffs' request for certification of a proposed Rule 23(b)(2) class and another Rule 23(b)(3) class for plaintiffs accommodated by a masking-and-testing regime. App.61a.

2. The parties cross-appealed under Federal Rule of Civil Procedure 23(f). United argued that the certified class lacked commonality, that individual questions predominate, and that a class action is not the "superior method of adjudicating" Plaintiffs' Title VII religious discrimination claim. App.20a. The Fifth Circuit affirmed the district court's certification decision across the board, thereby denying Respondents' cross-appeal—a ruling Respondents do not challenge here.

The Fifth Circuit held that the district court "thoroughly assessed" the proposed classes and did not abuse its discretion in certifying the unpaid-leave class. App.37a. As to commonality, the Fifth Circuit concluded that the district court had "engaged in a robust analysis" and did not abuse its discretion in holding that common evidence on religious sincerity, the reasonableness of the accommodation, and undue hardship unites the class. App.21a.

As to sincerity, the Fifth Circuit held that the district court had not abused its discretion in holding that the "uniform conduct" of each class member in requesting an exemption, submitting a third-party attestation, and ultimately submitting to unpaid leave "evinces the sincerity of the class members' religious beliefs and satisfies the commonality requirement." App.22a-23a. The Fifth Circuit emphasized that, were it to adopt United's argument that sincerity is necessarily so "fact-specific" as to foreclose class certification, App.25a, it would "effectively be establishing a bright-line rule against class actions in religious-discrimination cases," App.27a. And because "[n]either the Supreme Court nor [the Fifth Circuit] has ever held that such claims are excluded from Rule 23," the Fifth Circuit "decline[d] to be the first to hinder the vindication of religious freedom in this way." App.27a.

As to reasonableness, the Fifth Circuit again found no abuse of discretion. Because United accommodated each employee the same way—"by placing them on unpaid leave and giving them the *opportunity to apply* for other [United] jobs"—factual inquiries about the specific jobs employees were offered or the financial circumstances of the class members were not relevant to the issue of reasonableness. App.28a.

As to undue hardship, the Fifth Circuit "agree[d] with the district court that whether masking-and-testing would have imposed an undue burden can be answered class-wide" because the "relevant inquiry is whether an alternative masking-and-testing accommodation would have imposed a burden that is 'substantial in the *overall context* of [United's] business.'" App.29a-30a (second quotation quoting *Groff* v. *DeJoy*, 600 U.S. 447, 468 (2023)).

Turning to predominance, the Fifth Circuit rejected United's challenge because almost "all the questions of liability *** are common questions that can be resolved using the same evidence." App.31a. It explained that even though United could try—as it did with the class representatives here—to "pick off the occasional class member here or there through individualized rebuttal," that "does not cause individual questions to predominate." *Ibid*. (quoting *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014)). The court also determined that common questions predominate on the issue of damages because "backpay could be calculated with a mathematical formula using the average earnings for each member" and "the jury could determine an appropriate multiplier for any punitive damages." App.32a. The Fifth Circuit noted that while "the amount of compensatory damages to which any individual class member might be entitled cannot be calculated by objective standards," the existence of individualized questions on the issue of compensatory damages alone is not enough to destroy predominance "given that all other 'central issues in the action are common to the class.'" App.33a (quoting first *Allison* v.

Citgo Petroleum Corp., 151 F.3d 402, 417 (5th Cir. 1998), then *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U.S. 442, 453-454 (2016)).

Lastly, as to superiority, the Fifth Circuit concluded that, "[a]s the district court explained, judicial economy is well served by resolving in one action the claims of hundreds of individuals who raise the same questions of law and fact and for whom identical evidence supports (and opposes) their claims." App.35a. The Fifth Circuit emphasized that the existence of some individual suits does not make a class inferior, especially where "the identity among the class reduces the likelihood of manageability problems." App.36a.

Judge Willett concurred in part and in the judgment. App.38a-50a. He had "reservations" about sincerity as a common question but said the court "need not decide" it: one common question suffices, and reasonableness and undue hardship "do the trick." App.43a, 45a, 50a. And he explained that even if sincerity were not common, the certification "was neither unreasonable nor an abuse of discretion." App.45a-46a, 48a.

United sought rehearing en banc, which the Fifth Circuit denied with no judge requesting either a response or a poll of the Fifth Circuit. App.56a. United then sought a stay of the mandate pending resolution of its petition for certiorari, which the Fifth Circuit also denied. Order, *Kincannon* v. *United Airlines, Inc.*, No. 24-10708 (Apr. 27, 2026), ECF No. 149.

REASONS FOR DENYING THE PETITION

United asks this Court to opine on a preliminary, fact-based, discretionary certification of a narrow class of its employees. This Court should deny the petition because there is no circuit split, the decision below is correct, and in any event the case is riddled with vehicle problems weighing heavily against certiorari.

I. Especially Given the Standard of Review, the Fifth Circuit Neither Split With This Court's Precedents Nor With Its Sister Circuits.

United first argues (at 10-27) that review is needed because the Fifth Circuit's decision is inconsistent with this Court's precedents and conflicts with the rules articulated in other circuits. United is wrong on both counts.

A. United ignores the abuse of discretion inherent in class-certification decisions.

United's claimed split from this Court's precedents and other circuits ignores that, because class-certification decisions are exercises in discretion, there is no split just because courts reach different outcomes on different records.

1. Class-certification orders are reviewed for abuse of discretion because "most issues arising under Rule 23" are "committed in the first instance to the discretion of the district court." *Califano* v. *Yamasaki*, 442 U.S. 682, 703 (1979). That is because class-certification orders are "highly fact-based, complex, and difficult matters" that are "inappropriate for initial review before this Court." *Amchem Prods., Inc.*

v. *Windsor*, 521 U.S. 591, 630 (1997) (Breyer, J., concurring in part and dissenting in part). And because every class action has a different factual record, even if similar issues arise in different courts, the abuse of discretion standard allows courts to reach arguably contrary conclusions—limited only by reasonableness.

The district court here appropriately exercised that discretion when it certified the unpaid-leave class and refused to certify other proposed classes. See App.37a. That the district court could reach different results on a single record is proof positive that it did not establish a uniform legal rule requiring this Court's interlocutory intervention.

B. The decision below does not conflict with this Court's precedents.

In trying to show a split with the discretionary-certification order, United first relies on this Court's decisions in *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 349-350 (2011), and *Amgen Inc.* v. *Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 465-470, 473-474 (2013), for a rule that a question is common only if a reasonable decisionmaker must answer it "yes" for every class member or "no" for every class member. Pet.10-12. Neither case announced that rule.

Wal-Mart held that class claims must depend on a "common contention" that is "*capable* of classwide resolution"—meaning that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." 564 U.S. at 350 (emphasis added). A question is thus common if it can "generate common *answers*." *Ibid.* (citation omitted). Applying this rule, the Court explained that a plaintiff can carry her burden of showing commonality in a case challenging a "general policy" by showing that the policy "manifested itself *** in the same general fashion" for each class member. *Id.* at 353 (quoting *General Telephone Co.* v. *Falcon*, 457 U.S. 147, 159 n.15 (1982)). Such a "uniform employment practice" can "provide the commonality needed for a class action." *Id.* at 355.

Wal-Mart itself lacked that contention. The plaintiffs claimed a "violation of the same provision of law," but they did not claim that the law, which could "be violated in many ways," had been violated in the same way for every plaintiff. 564 U.S. at 350, 352. This case is the opposite. The certified class challenges a single, company-wide unpaid-leave practice applied the same way to every class member. App.33a n.12. Based on the uniformity of United's conduct, the district court identified three common questions capable of classwide resolution—sincerity, reasonableness, and undue hardship—and the Fifth Circuit found no abuse of discretion. App.21a, 37a. That straightforward application of *Wal-Mart*'s uniform-practice rule does not conflict with this Court's precedents.

Amgen likewise does not require an all-yes or all-no verdict. In that case, the Court held that, in a securities-fraud action, the materiality of a misrepresentation was common because it is judged according to an "objective standard" and "can be proved through evidence common to the class." 568 U.S. at 459-460, 467. The Court then held that plaintiffs need not prove that common question at certification, because a failure of the classwide proof would "end[] the case for the class." *Id.* at 474. Although United repeatedly treats that holding as though it addressed commonality, it was a predominance holding about an objective legal standard. It was not creating a rule that commonality exists only when a mixed verdict is legally impossible. And the courts below properly applied that framework: the certified class's liability questions are indeed *capable* of classwide resolution on common evidence, even if there is no *guarantee* of a single uniform answer. App.21a, 31a.

United tries (at 10-12) to convert *Wal-Mart*'s and *Amgen*'s holdings into a rule requiring bilateral finality—an all-yes or all-no verdict—to establish commonality. But that rule, which would effectively eliminate class rostering, is not the law. *Wal-Mart* made clear that the relevant question is whether the contention *can* be tested classwide. 564 U.S. at 350. It does not require every individualized defense to be legally impossible. And even if *Wal-Mart* could be read to suggest the bilateral finality that United champions, such a requirement was unnecessary for the resolution of the case and thus cannot be *Wal-Mart*'s holding.[5] Because no common question even *capable* of classwide resolution existed in *Wal-Mart*, see *id.* at 352, the Court had no need to adopt United's

[5] That *Wal-Mart* did not establish a rule requiring bilateral finality does not mean that Respondents have not shown it. They have. See Part II.

far stricter rule as its holding. And it did not. See *id.* at 350.

United, quoting Judge Willett, also calls Respondents' words-and-actions showing "evidence of the same type" rather than "the same evidence." Pet.8-9 (quoting App.43a-44a). That describes what happened in *Wal-Mart*. It does not describe what happened here with respect to United's uniform unpaid-leave policy provable from United's own records. And, as this Court has explained, a defendant's residual efforts to "pick off the occasional class member *** through individualized rebuttal" go to predominance, not commonality. *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 276 (2014); *accord Tyson Foods*, 577 U.S. at 453. United's reading of *Amgen* fails for the same reason. United treats *Amgen's* predominance discussion as a commonality holding that a mixed verdict must be legally impossible. Pet.10-11. But *Amgen* reached no such holding.

C. The decision below does not split from decisions in other circuits.

United next argues (at 12-17) that the Fifth Circuit stands alone in certifying a class when a common question might not ultimately be answered "yes" for every class member or "no" for every class member. But United has not identified any court of appeals that has adopted that all-yes-or-all-no rule, or any decision with which the Fifth Circuit's decision conflicts. The cases it cites hold only what the Fifth Circuit accepted when it affirmed the discretionary denial of Respondents' broader proposed classes in this very case—that without a uniform practice, there is no common issue.

1. Some of United's cases lacked commonality for the same reasons identified in *Wal-Mart*—there was no claim even *capable* of common resolution because they involved different challenged actions.

That was true, for example, in *Speerly* v. *General Motors, LLC*, 143 F.4th 306 (6th Cir. 2025) (en banc). There, the Sixth Circuit vacated certification of a class claiming that GM cars had a material "defect" because the class claimed only a defect "in the abstract" rather than one defect that applied to every car and that thereby united the entire class. *Id.* at 318. United treats *Speerly*'s statement that commonality fails if a "reasonable decisionmaker" "may answer 'yes' to a question for some class members and 'no' for others," *id.* at 316, as an all-yes-or-all-no "rule." Pet.12. But, in *Speerly*, as in *Wal-Mart*, there was no shared contention that could possibly create a common answer. That means *Speerly* cannot have been adopting a rule that later pick-offs, or mixed outcomes on other issues, make a shared contention uncommon, particularly given this Court's precedents clarifying that predominance—something that courts consider after finding commonality—can be met even if individualized defenses allow a defendant to pick off class members. See *Halliburton*, 573 U.S. at 276; accord *Tyson Foods*, 577 U.S. at 453.

Likewise, in *Davis* v. *Cintas Corp.*, 717 F.3d 476 (6th Cir. 2013), the Sixth Circuit found no abuse of discretion from a finding that "anecdotal evidence of" certain managers' making disparaging remarks to some female employees could not create a common answer about a discriminatory policy. *Id.* at 489. The court explained that these "circumstances of discrimination" were "highly individualized" and did not apply to every member of the class. *Ibid.* Of course, that bears no similarity to the facts here, where the class faced the exact same "circumstances of discrimination."

So too in *Bolden* v. *Walsh Construction Co.*, 688 F.3d 893 (7th Cir. 2012). There, the plaintiffs tried to group together claims of racial discrimination across a company where "many sites had different superintendents whose practices (and tolerance for the racism of others) differed." *Id.* at 895. The Seventh Circuit explained that this did not present common questions because a court would "need site-specific, perhaps worker-specific, details." *Id.* at 896. Once again, that is not this case.

Nor does the decision below conflict with *Ferreras* v. *American Airlines, Inc.*, 946 F.3d 178 (3d Cir. 2019). There the Third Circuit reversed a class-certification order after concluding (1) that the plaintiffs had failed to allege that an "overarching policy regarding exceptions has deprived anyone in particular of compensation to which he or she was entitled" and (2) that "a yes or no answer tells us nothing about actual common work habits, if there are any." *Id.* at 185. Since *Ferreras* dealt with claims by different categories of employees about how their different jobs were impacted by different supervisors' policies, *Ferreras* had no common contention to answer. Here, by contrast, a yes-or-no on whether the employees' words and actions established their sincerity, whether unpaid leave was reasonable, or whether an alternative would have been an undue hardship on United's business, answers the claim for the whole class.

And in *Stafford* v. *Bojangles' Restaurants, Inc.*, the Fourth Circuit rejected a commonality finding where the challenged policy applied to only "an estimated 80% of prospective class members." 123 F.4th 671, 679-680 (4th Cir. 2024). A practice that does not apply to the whole class is obviously not "common."

United cherry-picks quotes from these cases to make it appear that they read *Wal-Mart* the same way as United. But it has not shown a square conflict with any of them. Those cases simply describe the other side of the *Wal-Mart* divide—where the lack of common contentions dooms class certification. Nothing about the Fifth Circuit's decision below calls that into question. Had any of the cases United cites been heard by the panel below, the Fifth Circuit would have reached the same result—just as it did when it affirmed the denial of Respondents' other proposed classes.

Unlike those cases, the record here shows a uniform policy: a CEO "Scott-level initiative" applied from the top. ROA.6104. That policy used the same accommodation process and requirements, applied the same unpaid-leave accommodation, and reached employees serving in the same customer-facing positions. App.33a n.12. And every class member supplied evidence of sincerity that United itself accepted. ROA.6056, 6344-6345, 6556-6557.

In other words, the policy was the same for every United employee, regardless of whether that employee was in Houston or Juneau. United does not explain how these cases that did *not* challenge a uniform policy or allege that the law was violated the same way say anything about the ability to bring a class challenge to a policy where, as here, "the entire class or subclass [wa]s subjected to the same discriminatory act" and challenge it for the same reason. App.33a n.12 (quoting *Allison*, 151 F.3d at 417).

2. Other cases United cites *found* commonality for the same reasons as *Amgen*. And they underscore why the decision below did not chart new ground. In *In re Allstate Corporation Securities Litigation*, for example, the Seventh Circuit held that issues were common because the claims were based on "statements made by Allstate and its executives in public SEC filings, quarterly reports disseminated to the public, and conference calls with analysts from leading investment firms" that would be common to the class. 966 F.3d 595, 604 (7th Cir. 2020).

And in *Parsons* v. *Ryan*, the Ninth Circuit found no abuse of discretion in a class-certification order that found that "every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide" prison "policy or practice that creates a substantial risk of serious harm." 754 F.3d 657, 678 (9th Cir. 2014).

United (at 12-13) quotes those decisions for the proposition that proof must be "common for all plaintiffs, win or lose," *Allstate*, 966 F.3d at 604, or answerable "'yes' or 'no' in one stroke as to the entire class," *Parsons*, 754 F.3d at 684-685. But those courts found commonality because the challenged practice was in fact uniform and the legal standard was objective. That is true here.

3. United also relies on *Thorn* v. *Jefferson-Pilot Life Insurance Co.*, 445 F.3d 311 (4th Cir. 2006), for the idea that the same type of individualized proof cannot generate a common answer. Pet.14-15. But *Thorn* merely held that a discovery-rule accrual question "focuses on the contents of the plaintiff's mind" and so "is not readily susceptible to class-wide determination." 445 F.3d at 320. This says nothing about whether a challenge to a uniform employment practice necessarily fails commonality if class members also have individual mental-state evidence.

Still other cases turn on the discretion inherent in the class-certification decision. In *Johannessohn* v. *Polaris Industries Inc.*, for example, the Eighth Circuit found that the district court did not abuse its discretion when it concluded that there was no commonality in a case where the jury could either accept or reject the defendants' rebuttal evidence. 9 F.4th 981, 985 (8th Cir. 2021). But it did not hold that it would have been an abuse of discretion for the district court to rule the other way. Finding no abuse of discretion in one finding is very different from saying that it would be an abuse of discretion to find the opposite.

4. That leaves *Van* v. *LLR, Inc.*, 61 F.4th 1053 (9th Cir. 2023), which does not create a conflict either. There, the Ninth Circuit confronted a consumer class in which the defendant produced evidence that some

of the 13,680 class members received discounts deliberately designed to offset a sales-tax overcharge that formed the basis of their claims. *Id.* at 1068-1069. The Ninth Circuit reversed, holding that once a defendant substantiates an individualized, claim-dispositive issue, Rule 23 requires the plaintiff to prove that common questions still predominate—that a class-member-by-class-member inquiry will be unnecessary or workable. *Id.* at 1069.

That is a far cry from this case. The Fifth Circuit applied *Halliburton* to conclude that, even if United could "pick off the occasional class member here or there through individualized rebuttal," common questions still "predominate." App.31a, 26a-27a (quoting *Halliburton*, 573 U.S. at 276). The core liability questions—whether United's uniform unpaid-leave regime was a reasonable accommodation, and whether an alternative would have imposed an undue hardship—are common and driven by the company's own policy. Any residual sincerity challenge is rostering, not a liability mini-trial for employees already in the class—as both the panel majority and Judge Willett recognized. App.26a (majority op.); App.44a-45a, 49a (Willett, J., concurring). Such rostering is basic class administration—the ascertainability inquiry, which United does not dispute—not a rewrite of *Wal-Mart*. App.20a n.5.

In short, *Van* involved pervasive, injury-destroying individualized issues that threatened thousands of mini-trials. This case does not.

Halliburton holds that occasional pick-offs do not defeat predominance. There is no conflict.[6]

5. For the same reasons, United's reliance on non-binding "district court decisions in these circuits" misses the mark. Pet.16 (collecting cases). The district courts in those cases were presented with different records addressing different policies and different arguments. And each could review those records and exercise its discretion differently than the district court did here. That the individualized records before those courts led them to exercise their discretion to deny certification does not create a split—much less one worthy of this Court's review.

D. United's remaining arguments do not create a split.

In trying to satisfy this Court's Rule 10, United raises a few other arguments that are likewise meritless.

1. United first claims (at 29-30) a conflict with the Fifth Circuit's own decision in *Braidwood Management, Inc.* v. *EEOC*, 70 F.4th 914 (5th Cir. 2023). But the Fifth Circuit already rejected that argument. It held that *Braidwood* did "not foreclose" class treatment "of individual religious-discrimination claims" when it reversed certification of a nationwide class of employers. App.24a. *Braidwood* held that whether "religion plays an important role" in a closely held business is a "case-by-case" inquiry that could not be decided at the "level of abstraction" the district

[6] United's proposed path forward involves the *certainty* of hundreds of full-blown trials rather than using an efficient class action to address United's systemic discrimination.

court had used. 70 F.4th at 935. There is no such problem here: United itself accepted each class member's sincerity, and the district court reasonably concluded that the "words and actions" of every class member could establish sincerity even if United had not done so. App.24a-26a.

Moreover, even if there were a conflict with *Braidwood*, a certiorari petition is not the vehicle for resolving intracircuit conflicts. Rule 40, which provides for en banc review, exists to fix any such conflict between "the panel decision" and any other "decision of the court to which the petition is addressed" when "necessary to secure or maintain uniformity of the court's decisions." Fed. R. App. P. 40(b)(2)(A). United sought that relief, but the Fifth Circuit denied it without even calling for a response. This Court should not correct a purported conflict that the one court authorized to correct it does not see.

2. Finally, United pivots to calling the certified class "unprecedented." Pet.3, 20-21, 33. That may be, but only because of United's unprecedented policy of uniformly discriminating against a class of employees by forcing them into the same unlawful "accommodation." United does not deny that it subjected every customer-facing religious requester to the same costly unpaid leave, regardless of job or location. And while the Fifth Circuit and the district court were presented with unprecedented facts, they did not make unprecedented law. Instead, they applied the law as they found it. And even if they had misapplied it in some way, such a misapplication would not raise a question worthy of review. See Sup. Ct. R. 10.

II. The Decision Below Is Correct.

The Court should also deny review because the Fifth Circuit was correct to conclude that the district court did not abuse its discretion when it certified a class of customer-facing religious requesters placed on indefinite unpaid leave under United's uniform policy.

A. The Fifth Circuit rightly found that the district court's identification of three common questions was within its discretion.

The Fifth Circuit first correctly held that the district court acted within its discretion when it concluded that three common questions—sincerity, reasonableness, and undue hardship—satisfy Rule 23(a)'s commonality requirement. App.21a. Each question is "capable of classwide resolution," which is all that *Wal-Mart* requires. 564 U.S. at 350.

1. Starting with sincerity, this Court has held that courts have only the "narrow function" of asking whether the religious claimant has "an honest conviction," *Thomas* v. *Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981), that is, "in his own scheme of things, religious," *United States* v. *Seeger*, 380 U.S. 163, 185 (1965). Applying that principle, the Fifth Circuit affirmed the district court's conclusion that a jury may find that each class member made that showing by "articulat[ing] a religious reason for not getting the vaccine," "submit[ting] a letter from a third-party who could attest to his religious beliefs," and going on unpaid leave rather than violating those convictions. App.22a-23a. Indeed, relying on each employee's words and actions, *United itself*

determined it was "satisfied with the employee's showing of sincerity"—otherwise it would have terminated the employee. App.22a.

Despite this objective evidence of religious sincerity, United seeks to probe the religious beliefs of each class member to explore whether an employee borrowed statements in accommodation requests, departed from church doctrine, or has additional political reasons for not receiving a COVID-19 vaccine. Pet.20. But United cannot show that the district court abused its discretion when it rejected United's request to cross-examine every class member—all of whom received an "accommodation" only after United itself accepted their religious sincerity and granted their request.

Nor is United without recourse. The case is in its infancy. United can try to show a jury that the words-and-actions test does not prove sincerity—and, if it succeeds, that no class member is sincere. It can also lodge individualized challenges through ordinary rostering without defeating commonality—a point that both the panel majority and Judge Willett recognized.[7] App.26a; App.49a (Willett, J., concurring in part and in the judgment). In any event, commonality requires only one common question, and as Judge Willett explained, reasonableness and undue hardship "do the trick." App.45a.

United challenges this conclusion as mere "innovat[ion]." Pet.33. But class rostering happens in every case—it is just typically framed as an issue not

[7] United already has the evidence it claims to need to challenge sincerity.

of "commonality," but instead of "ascertainability," a requirement United does not challenge. App.20a n.5. As the Second Circuit has explained, the ability to determine "whether a particular individual is a member" of a proposed class is an "implied" requirement of Rule 23. *In re Petrobras Sec.*, 862 F.3d 250, 264-269 (2d Cir. 2017) (quoting *Brecher* v. *Republic of Argentina*, 806 F.3d 22, 24 (2d Cir. 2015)); accord *Young* v. *Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539-540 (6th Cir. 2012) ("[T]he *** need to review individual files to identify" a class's "members are not reasons to deny class certification." (collecting cases)). Here, only those who have "a sincerely held religious belief" are members of the class to begin with. App.5a. And since sincerity is built into the class definition, some form of rostering to determine who is, in fact, sincere is impliedly required.[8] Indeed, for this reason, United is wrong to suggest that the certified class "includ[ed] uninjured employees." Pet.27.

Finally, this Court has held that an employer violates Title VII when it "acts with the motive of avoiding accommodation." *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015). That violation occurred here when United decided that

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[8] United might argue that this creates a "fail-safe" class. Not so. A fail-safe class is "a class definition for which membership can only be ascertained through 'a determination of the merits of the case,'" *In re White*, 64 F.4th 302, 303 (D.C. Cir. 2023) (quoting *In re Rodriguez,* 695 F.3d 360, 369-370 (5th Cir. 2012)). Determining whether or not a particular employee is sincere does *not* resolve the merits of the Title VII failure-to-accommodate claims. And even if it did, Rule 23 does not contain a prohibition on fail-safe classes, and United does not ask this Court to create such an "extra-textual limitation." *White*, 64 F.4th at 303, 315.

every religiously accommodated customer-facing employee would go on indefinite unpaid leave. While *Abercrombie* does not make sincerity irrelevant to class membership, it confirms that the challenged decision was a single company act for which United may be held liable, not a series of individualized accommodations.

2. The Fifth Circuit also correctly held that the reasonableness of the accommodation is capable of a common answer. App.28a. United applied a single, company-wide unpaid-leave policy to every class member. That uniformity is not in dispute: the "accommodation" "was the same for every member of this class," and each had the same set of responsibilities. *Ibid*. That is the policy a jury would judge for reasonableness.

Resisting that conclusion, United points to other "positions and salaries available" for employees to seek. Pet.21-22. But, as the Fifth Circuit explained, the class members were not *offered* different jobs. They were given "the opportunity to apply for other jobs," an illusory accommodation that "was the same for every member of this class." App.28a (emphasis omitted). In other words, this is another uniform aspect of United's accommodation policy, which a jury may assess as reasonable or unreasonable.

Challenging this, United suggests that it could be unreasonable to offer such an accommodation to some employees and reasonable for others. Pet.22-23. But the Fifth Circuit rejected this claim too because the reasonableness of the accommodation is the same regardless of the "financial circumstances of the class members," all of whom "lost their income and were prohibited from working." App.28a. United was not offering the "paradigm" transfer that "eliminate[s] the conflict" with "no reduction in pay." Pet.22 (quoting *Rodriguez* v. *City of Chicago*, 156 F.3d 771, 775-776 (7th Cir. 1998)). Class members were given one company-wide chance to apply—and employees who took it were "instantly denied" because they were unvaccinated. ROA.11884-11885. Variations in openings, qualifications, or preferences do not mean that United's uniform policy offered individualized accommodations.

3. For similar reasons, the Fifth Circuit was correct to affirm the district court's decision about whether the existence of undue hardship was a common question. Since *Groff* v. *DeJoy*, the relevant question in considering undue hardship is whether an alternative would impose a burden that is "substantial in the overall context of [United's] business" and would "result in substantial increased costs in relation to the conduct of its particular business." 600 U.S. at 468, 470 (citing *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977)). The factors this Court identified to help answer that question—the nature, size, and operating cost of the employer, and the practical impact of the proposed accommodation—thus apply company-wide and do not vary from one class member to another. And, as the Fifth Circuit recognized, United utterly "failed to demonstrate that *** whether every other possible alternative accommodation would have imposed a substantial increase in costs *** requires individualized review, even if *some* of the

possibilities" of alternative accommodations "raise more individualized questions." App.30a.

United has failed to make that showing here too, arguing instead that it must be able to argue—for each employee—that offering an accommodation different from unpaid leave would impose an undue hardship. Pet.23-24. United says *Groff* decided only what "substantial" means, not whether hardship can vary by airport. *Ibid*. (citing *Groff*, 600 U.S. at 468). But after *Groff*, the question is still the burden "in the overall context of [United's] business." 600 U.S. at 468. Evidence that reserve staffing differs between Wilmington and O'Hare is common evidence about that one company-wide question. And since *that* evidence is common, United cannot carry its burden of showing that the Fifth Circuit was wrong to find no abuse of discretion as to the commonality of the undue-hardship inquiry.

B. The Fifth Circuit rightly found no abuse of discretion in the district court's conclusion that common questions predominate.

United next argues that individualized damages defeat predominance. Pet.24. This Court has repeatedly rejected that argument.

1. Once more, the fact that a company "might attempt to pick off the occasional class member here or there through individualized rebuttal does not cause individual questions to predominate." *Halliburton*, 573 U.S. at 276. And common questions may predominate "even though other important matters will have to be tried separately, such as

damages." *Tyson Foods*, 577 U.S. at 453. Representative averages can make that showing. A sample "is a permissible method of proving classwide liability" if "each class member could have relied on that sample to establish liability if he or she had brought an individual action." *Id.* at 455.

These cases make quick work of United's predominance arguments, including as to compensatory and punitive damages. Respondents do not even propose *Tyson Foods*' classwide representative sample. They would calculate each class member's backpay from that employee's own hours and an average wage rate drawn from that employee's own earnings history, using United's pay records. App.104a; App.32a.

2. In arguing otherwise, United claims that a jury could "rely on United's individualized evidence showing that *** damages differed across employees." Pet.24. But, as the Fifth Circuit recognized, where liability can be resolved through common evidence such as United's pay records, this Court's precedents allow *all* damages questions to be resolved through individualized inquiry. App.31a-32a (citing *Tyson Foods*, 577 U.S. at 453-454). United cannot claim otherwise.

Relying on *Wal-Mart,* United also challenges Respondents' proposed formula as a forbidden "Trial by Formula." Pet.27 (quoting *Wal-Mart*, 564 U.S. at 367). But *Wal-Mart* rejected using a *sample* of class members to determine liability for a Rule 23(b)(2) class. See 564 U.S. at 367. The formula here does the opposite—it uses each member's own pay and hours.

App.105a. And—as the Fifth Circuit recognized—United's attack on that formula is itself "common to the claims made by all class members." App.32a-33a (quoting *Tyson Foods*, 577 U.S. at 457).[9]

United's key case, *Allison* v. *Citgo Petroleum Corp.*, 151 F.3d 402, 419 (5th Cir. 1998), does not hold otherwise. Pet.26. *Allison* concerned a mandatory Rule 23(b)(2) class in which individualized Title VII damages were the center of the case. It does not forbid Rule 23(b)(3) certification where liability is common and damages "will have to be tried separately." *Tyson Foods*, 577 U.S. at 453. Issues with mitigation, the bidding process, and Respondents' formula model are the very types of separate damages issues that this Court has held can be tried separately without defeating predominance. Pet.24-25.

* * *

In short, the Fifth Circuit correctly applied the abuse-of-discretion standard in affirming the district court's holding that the questions of sincerity, reasonableness, and undue hardship are common and predominated.[10]

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[9] United claims that its expert showed Respondents' formula to produce inaccurate results. Pet.25. But, as the district court explained, United's expert misunderstood "Plaintiffs' damages model." App.105a.

[10] Superiority played heavily in United's appeal, but United has abandoned that challenge here.

III. This Case Has Multiple Vehicle Problems.

Even if the Court were inclined to address the legal questions United raises, this case would be an exceptionally poor vehicle.

1. Most immediately, the class-certification order is intensely fact-bound. The Fifth Circuit reviewed the district court's certification decision solely for abuse of discretion—a standard that turns on the specific record developed below. That record includes the particulars of United's accommodation process, the content of the written accommodation requests and corroborating letters, the uniformity of the unpaid-leave regime, and the district court's discretionary findings regarding commonality, predominance, and superiority. And it necessarily includes the fact that United itself already concluded that each class member had a "[d]eeply held religious belief" and, in United's view, had "met [the] criteria for a reasonable accommodation." ROA.6056, 6344-6345, 6556-6557.

Resolving the petition would require this Court to delve into those case-specific details rather than announce a broadly applicable legal rule. But this Court generally does "not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925). It will only "rarely" grant certiorari to review fact-bound applications of settled legal standards. Sup. Ct. R. 10.

And there is even less reason to grant review here because the Court would be forced to review the immense record in light of the district court's "broad authority to exercise control over a class action." See *Gulf Oil Co.* v. *Bernard*, 452 U.S. 89, 100 (1981). As

Justice Scalia once observed, "when the petitioner claims only that a concededly correct view of the law was incorrectly applied to the facts," this Court applies a policy of denying certiorari "with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires." *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting). That "two-court rule," *id.* at 456 (Scalia, J., dissenting), has even greater force when the only question is not what the record *requires*, but what the record allows.

Yet that is the question United asks this Court to review. United's petition is a vehicle for relitigating United's disagreements with the district court's discretionary certification order and review of the factual record—arguments that have failed at every level of review. Perhaps recognizing that such disagreements are not worthy of review, United studiously avoids addressing the standard of review, mentioning it only in passing, and only in the Statement portion of its petition. Pet.9. But ignoring the standard does not make it disappear.

2. Further complicating this Court's review is the interlocutory nature of review under Rule 23(f). Class-certification orders are provisional by design and "may be altered or amended before final judgment" if manageability or other concerns materialize. Fed. R. Civ. P. 23(c)(1)(C). As this Court has recognized, Rule 23(c)(1)(C) means that "a district court's order denying or granting class status is inherently tentative." *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 469 n.11 (1978). Whatever the judge's initial conclusion about the superiority of class status, the "judge remains free

to modify it in the light of subsequent developments in the litigation." *General Telephone Co.* v. *Falcon*, 457 U.S. 147, 160 (1982).

The "inherently tentative" nature of the certification order means that granting certiorari now would require this Court to opine on a trial plan that has not yet been implemented and that remains subject to change for any reason within the district court's broad discretion. Indeed, this was the subject of (and reason for) Judge Willett's concurrence. App.50a (Willett, J., concurring). While United's petition emphasizes the supposed difficulties of a multi-stage process on sincerity, liability, and damages, those difficulties, if they exist, are matters for the district court to manage in the first instance, subject to appellate review after final judgment. *Microsoft Corp.* v. *Baker*, 582 U.S. 23, 26 (2017).

United's Seventh Amendment and three-phase "chaos" parade, Pet.28, 33-35, falters out of the same gate. Not only does it ignore the "chaos" of requiring hundreds of jury trials rather than a single class action trial with limited rostering. It also ignores that Judge Willett flagged his concerns about these issues but still joined the judgment because the district court can address them down "the road." App.43a, 50a (Willett, J., concurring). For now, since the Fifth Circuit declined to mandate any one trial structure, this Court's review is premature.

Indeed, whatever its merit, there is no reason for the Court to address United's question about class certification in the abstract, without the benefit of seeing how the district court manages the case or even whether the problems about which United speculates throughout its petition arise at trial. In arguing otherwise, United claims that allowing this case to proceed to trial would pressure it to settle rather than face the possibility that the district court will be unable to preserve its rights. Pet.35 (citing *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011)). But United concedes (at 35) that the district court "might *** theoretically preserve" the rights that it claims are at risk once the procedures are settled in the district court.

Given that possibility, it cannot be enough that United may feel less pressure to settle if this Court intervenes now. Every provisionally certified class exerts some settlement pressure. If that alone warranted certiorari, this Court would sit as a permanent court of error for Rule 23(f) appeals—with the principal mission of trying to guide the parties to settlements the Court finds fair. But that is obviously not this Court's role.

3. United's final request to hold the petition for the forthcoming petition in *Detwiler* v. *Mid-Columbia Medical Center* only confirms the mismatch between its petition and the usual Rule 10 standards. Pet.36 (citing 156 F.4th 886, 892 (9th Cir. 2025)).

Detwiler, a single-plaintiff case about whether a belief is "religious or secular" under Title VII, could not provide any meaningful guidance on the proper application of Rule 23. 156 F.4th at 890, 892. Here, United already accepted each class member's religious sincerity. United is thus wrong to say that a *Detwiler*-style screen would "definitively establish" that some class members' objections were secular. Pet.36-37. But even if *Detwiler* could sway the merits, this case is not yet there. Indeed, United's continued focus on the merits misses the point at the certification stage.

If this Court resolves *Detwiler* as United suggests, that presents at most a rostering issue the district court can apply. It does not give an independent reason to hold this petition. And, as Judge Willett explained, "the district court's certification decision can be sustained without resolving the sincerity question" because there are "two other common questions." App.44a-45a (Willett, J., concurring). Because that decision "was neither unreasonable nor an abuse of discretion" "[e]ven if sincerity is not a common issue," App.48a (Willett, J., concurring), nothing in *Detwiler* would disturb class certification.

4. United's remaining pitch is that the question presented is important. Pet.28-35. But that's wrong too. A one-off unpaid-leave regime applied after the employer accepted sincerity will not "tear down the guardrail of Rule 23" in employment, fraud, and mass-tort cases. Pet.29. Those hypotheticals assume the Fifth Circuit certified a class on parallel proof of different practices. It did not. For that reason, even Judge Willett found no abuse of discretion despite his reluctance to resolve sincerity at this stage. App.41a, 48a.

And, if the Fifth Circuit had adopted the rule United claims it did, it would have *reversed* the denial of class certification for the other classes proposed by Respondents. Each member of those classes presented proof of injury from United's uniform policy just like

United claims the certified class did. See, *e.g.*, App.11a-12a (finding no abuse of discretion in failing to certify a class despite United's uniform, coercive threat); App.16a (finding no abuse of discretion in failing to certify a class that was uniformly subjected to a masking-and-testing accommodation).

CONCLUSION

This case presents a routine, deferential affirmance of a district court's careful application of Rule 23 to a specific set of facts arising from a unique, company-wide policy. It does not implicate any conflict among the circuits, any novel legal principle of recurring national importance, or any other issue that justifies this Court's interlocutory review. The petition should be denied.

Respectfully submitted,

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