

No. 26-280

IN THE
Supreme Court of the United States

KRISTEN GRACE, ET AL.,

Petitioners,

v.

RTX CORPORATION, FKA RAYTHEON TECHNOLOGIES
CORPORATION,

Respondent.

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

BRIEF IN OPPOSITION TO PETITION

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QUESTION PRESENTED

Certain of the petitioners—Lisa Leake, Kristen Grace, Joseph Heyser, Christopher Stein, and Leslie Zepeda (the “Arizona Petitioners”)—previously sued Raytheon Technologies Corporation,¹ on behalf of a purported class, in the United States District Court for the District of Arizona on September 24, 2022. The Arizona Petitioners asserted causes of action under 42 U.S.C. §§ 2000e-2 and 2000e-3 (“Title VII”). The Arizona District Court dismissed the Arizona Petitioners’ complaint, with prejudice; the United States Court of Appeals for the Ninth Circuit affirmed; and this Court denied the Arizona Petitioners’ petition for a writ of certiorari on October 21, 2024.

That should have been the end of these proceedings, but unfortunately, it was not. The Arizona Petitioners, joined by Rossana Hernandez and Christopher Sublett (the “New Petitioners,” and, together with the Arizona Petitioners, the “Petitioners”) filed a new lawsuit in the United States District Court for the Eastern District of Virginia, asserting Title VII claims based upon the same underlying facts as those presented in the Arizona action. Raytheon moved to dismiss, asserting that the Arizona Petitioners’ claims were barred by *res judicata*, and that all Petitioners’ claims were untimely because they did not

¹ Petitioners were actually employed by Raytheon Company. Raytheon Technologies Corporation is now RTX Corporation. In this opposition, Respondent refers to itself simply as “Raytheon” for ease of reference.

commence the Virginia action within 90 days of receiving “right to sue” letters from the Equal Employment Opportunity Commission (“EEOC”). Petitioners contended that *res judicata* did not apply because the Arizona action was a putative class action (whereas the Virginia action was an “individual action”) and that Petitioners’ time to file was tolled through this Court’s denial of certiorari in the Arizona action, under the class action tolling doctrine set forth in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974).

The Virginia District Court rejected Petitioners’ arguments, holding that the Arizona Petitioners were barred by *res judicata* and that *American Pipe* did not toll Petitioners’ deadlines during appeals from the Arizona District Court’s order, rendering their claims untimely. The United States Court of Appeals for the Fourth Circuit unanimously affirmed on the timeliness issue, and therefore did not reach the *res judicata* issue.

The question presented by the petition is:

- (1) Whether Petitioners’ Title VII claims were untimely where *American Pipe* tolling does not apply during the pendency of an appeal from dismissal of a class action?²

² If the Court grants Petitioners’ petition for a writ of certiorari, Raytheon reserves the right to raise the *res judicata* issue as an alternative basis for affirmance.

RULE 29(6) STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Raytheon, by and through its undersigned counsel, hereby states that Defendant-Respondent RTX Corporation is a publicly-traded company that has no parent company, and no publicly-held entity directly or indirectly owns 10% or more of its stock.

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INTRODUCTION

This petition poses a simple question: does *American Pipe* tolling continue during the pendency of an appeal, after a class action complaint has been dismissed? Every United States Circuit of Court of Appeals to address this issue has reached the same answer: no. Given the uniformity in the law on this straightforward issue, the Court should deny the petition.

This case has its origins in a routine Title VII action originally filed in Arizona federal court by the Arizona Petitioners. All of the Petitioners were terminated or resigned from Raytheon in late 2021 or early 2022 after refusing to comply with the conditions of their exemptions from Raytheon's then-in-place COVID-19 vaccination policy. Petitioners received religious exemptions from the policy and were not required to be vaccinated if they complied with certain health and safety conditions, such as masking and weekly testing. Petitioners refused to comply with those conditions, however.

The Arizona District Court dismissed the Arizona Petitioners' Title VII claims, with prejudice. The Ninth Circuit unanimously affirmed and this Court denied the Arizona Petitioners' petition for a writ of certiorari. Unsatisfied with that result, the Arizona Petitioners, joined by the New Petitioners, filed new Title VII claims arising from the same underlying facts in the United States District Court for the Eastern District of Virginia. The Virginia District Court held that the Arizona Petitioners' claims were barred by *res*

judicata, and that all Petitioners claims were untimely, as they failed to commence the Virginia suit within 90 days of receiving EEOC “right to sue” letters and *American Pipe* tolling ended once the Arizona District Court dismissed the Arizona Petitioners’ claims with prejudice.

The Fourth Circuit unanimously affirmed on timeliness grounds, without reaching the *res judicata* issue. On the question of whether *American Pipe* tolling applied during the Arizona Petitioners’ Ninth Circuit appeal and prior petition before this Court, the Fourth Circuit held that tolling did not apply and that it “is not a close issue” because the Second, Third, Fifth, Sixth, Seventh, Eleventh, and Federal Circuits have all reached the same conclusion. App. 26-27a.³

As the Fourth Circuit recognized, this case does not present a circuit split or any unsettled or novel issues relating to *American Pipe* tolling. Every federal Circuit Court of Appeals to address the issue has held that once a class action complaint is dismissed, *American Pipe* tolling ends and class members are on notice that they need to file individual actions to preserve their claims. The Circuit Courts’ uniform holdings are consistent with this Court’s description of *American Pipe* as being a narrow exception to the normally strict application of the statute of limitations.

Petitioners’ only response is to cite to two state court cases, which did not apply *American*

³ References to “App. __” are to the Appendix filed by Petitioners with their petition.

Pipe and relied upon federal court decisions that were ***overruled or otherwise abrogated***. Put simply, Petitioners cite no real support for their argument. This Court should deny the petition.

STATEMENT OF THE CASE

Because the petition relates to the narrow issue of *American Pipe* tolling, Raytheon only briefly summarizes the underlying facts and proceedings here.

Petitioners are former employees of Raytheon. App. 2a. They all requested, and received, religious exemptions from the COVID-19 vaccination policy that Raytheon had in effect in 2021. *See id.* As part of their exemptions, Petitioners were required to comply with alternative health and safety conditions, such as masking and weekly testing. *See id.* Petitioners refused to comply with those alternative conditions, resulting in their terminations or resignations from Raytheon in late 2021 or early 2022. *See id.*

In September 2022, the Arizona Petitioners commenced a purported class action lawsuit in the Arizona District Court, asserting Title VII claims based upon alleged religious discrimination. *See* App. 2a-3a. On February 27, 2023, the Arizona District Court dismissed the Arizona Petitioners' individual claims, with prejudice. App. 3a; *see also Leake v. Raytheon Technologies Corp.*, 2023 U.S. Dist. LEXIS 32177 (D. Az. Feb. 27, 2023). On April 29, 2024, the Ninth Circuit unanimously affirmed, and this Court denied the Arizona Petitioners' petition for a writ of certiorari on October 21, 2024.

App. 3a; *see also* *Leake v. Raytheon Technologies Corp.*, 2024 U.S. LEXIS 4384 (Oct. 21, 2024); *Leake v. Raytheon Techs. Corp.*, 2024 U.S. App. LEXIS 10287 (9th Cir. Apr. 29, 2024).

During various times from October 3, 2022 through August 5, 2024, each of the Petitioners received right-to-sue letters from the EEOC. App. 8a. Thus, the latest possible date for any of the Petitioners to bring suit, absent tolling, was November 4, 2024, 90 days from the receipt by Petitioner Heyser of a right-to-sue letter on August 5, 2024. *See id.*

Petitioners commenced their action in the Eastern District of Virginia after that date, on November 20, 2024. App. 8a. On July 22, 2025, the Virginia District Court granted Raytheon's motion to dismiss. App. 10a. The District Court first held that the Arizona Petitioners' claims were barred by *res judicata*. App. 5a-7a. The District Court further held that all Petitioners' claims were time barred, as they failed to bring suit within 90 days of receiving their respective right to sue letters, and *American Pipe* tolling, to the extent it applied, ended when the Arizona District Court dismissed the Arizona Petitioners' complaint, with prejudice, in February 2023. App. 7a-9a.

Petitioners appealed and the Fourth Circuit unanimously affirmed. App. 13a-14a. The Fourth Circuit held that *American Pipe* tolling ends when a class action complaint is dismissed; it does not continue during an appeal from that dismissal or while a petition for a writ of certiorari is pending. App. 18a-22a, 25a-28a.

The Fourth Circuit rejected Petitioners' reliance on authorities from state courts in Kansas in Utah, holding that, *inter alia*, those cases did not apply federal law and relied upon inapposite federal authorities to support their holdings under their respective state laws. App. 22a-25a. The Fourth Circuit concluded that "[t]his is not a close issue. Every circuit court to take up this question has held that *American Pipe* tolls a statute of limitations only until class status is denied, either by the district court or on appeal." App. 27a.

REASONS TO DENY THE PETITION

Rule 10 of this Court's Rules provides that "[a] petition for a writ of certiorari will be granted only for compelling reasons." S. Ct. R. 10. The Rule provides examples, including a Circuit Court decision that conflicts with the decisions of one or more other Circuit Courts on the same issue; a decision on an important federal question by a state court of last resort that conflicts with other decisions; or a decision involving "an important question of federal law that has not been, but should be, settled by this Court, or that has decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.*

Here, there are no "compelling reasons" for review. The Fourth Circuit's holding does not conflict with that of other courts or involve unsettled issues of law. The Virginia District Court and Fourth Circuit applied well-established law and concluded, correctly, that *American Pipe* tolling did not render Petitioners' Title VII claims timely. The Court should deny the petition.

I. THERE IS NO CONFLICT OR COMPELLING QUESTION.

Petitioners point to no conflict between the Fourth Circuit’s decision and the decisions of this Court or any other Circuit Court. *See* Pet. 6-12. Nor do they identify any compelling question of federal law that should be addressed by this Court. *See id.*

A. Title VII requires that an aggrieved person file a civil action within 90 days of receiving a right-to-sue letter from the EEOC. 42 U.S.C. § 2000e-5(f)(1); *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 454 (2008) (Title VII “suit ***must*** be filed within 90 days of obtaining an EEOC right to sue letter” (emphasis added)).

Petitioners do not dispute that, absent *American Pipe* tolling, their claims are untimely. *See* Pet. 6-12. “[T]he *American Pipe* rule provides a ***narrow exception*** to the fixed statutes of limitations, suspending their running from the date a class action is filed until the date it is denied, ***for whatever reason.***” *Bridges v. Dep’t of Md. State Police*, 441 F.3d 197, 212 (4th Cir. 2006) (emphasis added).

B. “The general rule is that the judgment of a district court becomes effective and enforceable as soon as it is entered; there is no suspended effect pending appeal unless a stay is entered.” *In re Copper Antitrust Litig.*, 436 F.3d 782, 793 (7th Cir. 2006); *see also, e.g., City of San Antonio v. Hotels.com, L.P.*, 593 U.S. 330, 333 (2021) (“Unless a further stay is granted, the prevailing party can

attempt to execute on [a] judgment while an appeal is pending”).

C. Consistent with that principle, every Circuit Court of Appeals to address this issue has concluded that *American Pipe* tolling **does not continue while an appeal is pending** from the denial or dismissal of a class action; “the statute of limitations begins running again as soon as class certification is denied.... At that point, the parties are on notice that they must take steps to protect their rights or suffer the consequences.” *Copper Antitrust*, 436 F.3d at 793; *see also Giovanniello v. ALM Media, LLC*, 726 F.3d 106, 117 (2d Cir. 2013) (“If the Court had contemplated that tolling continued through the pendency of reconsideration or through appeal, there would be no need for class members to take action to protect their rights”); *Taylor v. United Parcel Serv., Inc.*, 554 F.3d 510, 519 (5th Cir. 2008) (“an appeal of the denial of class certification does not extend the tolling period”); *Culver v. City of Milwaukee*, 277 F.3d 908, 914 (7th Cir. 2002) (“**[W]hen the suit is dismissed...the statute resumes running for the class members**” (emphasis added)); *Stone Container Corp. v. United States*, 229 F.3d 1345, 1355-56 (Fed. Cir. 2000) (“[W]e hold that tolling ends when class certification is denied **in the trial court**” (emphasis added)); *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1391 (11th Cir. 1998) (en banc) (“If class certification is denied in whole or in part, the statute of limitations begins to run again as to those putative class members who were excluded from the class. In order to protect their rights, such individuals must seek to

intervene in the pending action..., ***or file a separate individual action before the time remaining in the limitations period expires***” (emphasis added)); *Andrews v. Orr*, 851 F.2d 146, 149-50 (6th Cir. 1988) (holding that the suit “ceased to be a class action,” and tolling ended, upon entry of order denying class certification); *Fernandez v. Chardon*, 681 F.2d 42, 48 (1st Cir. 1982) (“the statute will resume running when class certification is denied”).

Given the uniformity in the law on this point, there is no circuit split or compelling question that warrants this Court’s review.

II. PETITIONERS’ RELIANCE UPON STATE COURT DECISIONS IS MISPLACED.

Petitioners cite two state court cases to “support” their position: *Seaboard Corp. v. Marsh Inc.*, 284 P.3d 314 (Kan. 2012) and *American Tierra Corp. v. W. Jordan*, 840 P.2d 757 (Utah 1992). *See* Pet. at 7-8. These authorities do not help Petitioners.

A. *Seaboard* involved a specific Kansas saving statute not at issue here, K.S.A 60-518. *See Seaboard*, 284 P.3d at 328. The Kansas Supreme Court expressly held that “we apply the plain language of the statute rather than base this decision on the policy reasons that underlie the tolling principle of *American Pipe*...**especially because we have previously declined to adopt *American Pipe* tolling principles.**” *Id.*

at 327 (bold emphasis added). Accordingly, *Seaboard* has nothing to do with this case.

True, the Kansas Supreme Court asserted, in *dicta*, that “several federal courts have held that *American Pipe* tolling continues during the pendency of the class action, including while its certification status is on appeal.” *Id.* at 329. Even setting aside that it is *dicta*, the Kansas court relied upon cases that were later overruled or vacated. It cited to *Griffin v. Singletary*, 17 F.3d 356 (11th Cir. 1994) (cited in Pet. at 8), but the Eleventh Circuit, sitting *en banc*, subsequently held that *American Pipe* tolling **does not** continue during an appeal. *Armstrong*, 138 F.3d at 1382-91. *Seaboard* also cited a Third Circuit decision, *Edwards v. Boeing Vertol Co.*, 717 F.2d 761 (3d Cir. 1983) (cited in Pet. at 8) that the Kansas court acknowledged was vacated by this Court. *See Seaboard*, 284 P.3d at 329. Finally, *Seaboard* relied upon a New York District Court decision, *see id.*, but the Second Circuit later effectively overruled that decision. *See Giovanniello*, 726 F.3d at 117.

B. The Utah Supreme Court’s decision in *American Tierra* suffers from a similar problem. There, the Utah court claimed that “[s]everal lower federal courts have...uniformly conclud[ed] that the rationale for tolling continues throughout the pendency of the appeal.” *American Tierra*, 840 P.2d at 762. Notably, the *en banc* Eleventh Circuit held that “the *American Tierra* court misread federal law.” *Armstrong*, 138 F.3d at 1384 n.18. For good reason: *American Tierra* relied primarily

on the Seventh Circuit's decision in *Jimenez v. Weinberger*, 523 F.2d 689 (7th Cir. 1975) (cited in Pet. at 9). But, the Seventh Circuit later held that *Jimenez's* statement was “dicta” that “should not be followed.” *Hemenway v. Peabody Coal Co.*, 159 F.3d 255, 266 (7th Cir. 1998) (“Later cases have confirmed that time begins immediately, rather than after final judgment or decision on appeal”).

The *American Tierra* court also cited to a district court case from Connecticut, *West Haven School Dist. v. Owens-Corning Fiberglass Corp.*, 721 F. Supp. 1547 (D. Conn. 1988) (cited in Pet. at 9), which is within the Second Circuit and thus was effectively overruled by *Giovanniello*, *supra*; and a district court case from Mississippi, which is within the Fifth Circuit and thus was effectively overruled by the Fifth Circuit in *Taylor*, *supra*. The only other case cited by *American Tierra* was a 1985 Maryland District Court case in which the court held that *American Pipe* tolling ***did not apply***. See *Davis v. Bethlehem Steel Corp.*, 600 F. Supp. 1312, 1319 (D. Md. 1985), *aff'd* 769 F.2d 210 (4th Cir. 1985) (cited in Pet. at 9). *Davis* did include *dicta* suggesting that tolling could continue on appeal, but it relied upon, *inter alia*, the Seventh Circuit's *Jimenez dicta*, which, again, the Seventh Circuit subsequently instructed courts not to follow. See *id.* at 1316; see also *Armstrong*, 138 F.3d at 184 n.18 (stating that *Davis* was “wrongly decided”).

C. Petitioners contend that there are “conflicting rulings in the Seventh and Eleventh Circuits.” Pet. at 11-12. Petitioners apparently

refer to *Jimenez* and *Griffin*, *supra*, but again, there is no conflict: the Seventh and Eleventh Circuits later repudiated *Jimenez* and *Griffin*. See *Hemenway*, 159 F.3d at 266; *Armstrong*, 138 F.3d at 1382-91.

In short, Petitioners rely upon state courts applying *state*, rather than federal, law, and federal authorities that have been overruled or abrogated. They have no real response to the fact that the Circuit Courts of Appeals that have addressed this issue are now uniform in holding that *American Pipe* tolling ends when a class action complaint is dismissed.

The Court should deny the petition.

CONCLUSION

For the reasons set forth above, the petition should be denied.

September 29, 2026

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