

No.

In the Supreme Court of the United States

DANIEL GEORGE, PETITIONER,

v.

PIEDMONT AIRLINES, INC.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents an important and recurring question of federal law that has divided the courts of appeals: whether an employer may deny a service member a benefit of employment because he was on leave for military service. The Uniformed Services Employment and Reemployment Rights Act (USERRA) forbids an employer to deny “any benefit of employment” to a person “on the basis of” military service. 38 U.S.C. § 4311(a). Another provision guarantees a service member absent for military service at least the non-seniority benefits the employer provides to employees on other forms of leave. § 4316(b)(1).

The courts of appeals are divided over how those two provisions fit together. The Ninth Circuit holds that § 4316(b) sets a floor that leaves § 4311 fully operative, and it has expressly questioned the contrary view. The Fifth, Seventh, and Eighth Circuits hold that § 4316(b) sets a ceiling: a service member is entitled to no more than the treatment given employees on comparable leave.

In the decision below, the Third Circuit adopted the ceiling view. It reasoned that USERRA entitled petitioner at most to the same benefits as employees on comparable leave, and held that whether he received them is a question of contract interpretation that must be resolved in arbitration under the Railway Labor Act. It therefore affirmed the dismissal of his USERRA suit.

The question presented is:

Whether 38 U.S.C. § 4311 prohibits an employer from denying a service member a benefit he would have received but for military leave, or whether § 4316(b) permits that denial whenever the employer also denies the benefit to employees on other forms of leave.

PARTIES TO THE PROCEEDING

Petitioner is Daniel George, an individual. Respondent is Piedmont Airlines, Inc.

Under this Court's Rule 29.6, petitioner Daniel George states that he is an individual with no parent corporation and no publicly held stockholder. Respondent Piedmont Airlines, Inc. is a wholly owned subsidiary of American Airlines Group Inc., a publicly held corporation that trades on the NASDAQ Global Select Market under the symbol AAL.

RELATED PROCEEDINGS

United States Court of Appeals for the Third Circuit:

George v. Piedmont Airlines, Inc., No. 25-1064
(judgment entered May 5, 2026; rehearing denied
and amended judgment entered June 1, 2026)

United States District Court for the Eastern District of
Pennsylvania:

George v. Piedmont Airlines, Inc., No. 2:23-cv-03939
(judgment entered Jan. 3, 2025)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is unreported. The opinion of the district court (Pet. App. 7a-19a) is reported at 761 F. Supp. 3d 804. The order of the court of appeals denying rehearing (Pet. App. 20a-21a) is unreported.

JURISDICTION

The court of appeals entered judgment on May 5, 2026, denied a timely petition for panel rehearing and entered an amended judgment on June 1, 2026, Pet. App. 20a-21a, 23a-24a, and took no action on later-filed petitions for rehearing en banc on June 15, 2026, Pet. App. 22a. On August 14, 2026, Justice Alito extended the time to file this petition to and including September 29, 2026. No. 26A199. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4302(b), 4303(2), 4311(a) and (c), and 4316(a) and (b)(1), are reproduced at Pet. App. 25a-27a.

STATEMENT OF THE CASE

This case presents a recurring and important question that has divided the courts of appeals: whether an employer may deny a service member a benefit of employment because he was on leave for military service, simply because the employer denies the benefit to employees on other forms of leave. Congress enacted USERRA to ensure that employees are not made worse off at work because they serve in the Armed Forces. Its central command is direct: an employer may not deny

“any benefit of employment” to a person “on the basis of” military service. 38 U.S.C. § 4311(a).

Daniel George was a Piedmont Airlines pilot and an Air Force Reserve lieutenant colonel. Piedmont promised a \$70,000 retention bonus to a Piedmont pilot hired by American Airlines while the pilot was employed by Piedmont, so long as the pilot was still employed by Piedmont and on its seniority list when paid. American hired George while he was deployed on active duty. But Piedmont denied him the bonus because his deployment placed him on military leave during which he was deemed to not be an “employee.”

There is no question that George was “denied” a “benefit of employment” “on the basis of” his military service. But for his service, George would have been an active Piedmont pilot when American hired him, and Piedmont would have paid him \$70,000. The condition that disqualified him was therefore the direct consequence of his military service. Section 4311 prohibits that denial.

In the decision below, the Third Circuit rejected that view. The panel described USERRA as “an anti-discrimination law” and George’s suit as alleging that Piedmont “violated [it] . . . by denying him the bonus because of his military service.” Pet. App. 2a, 3a. But it held that USERRA entitled George at most to the treatment given employees on comparable *non-military* leave: “[i]f the term covers similarly situated workers on long-term leave or furlough, then George must be given the bonus, too. But if no one on long-term leave or furlough is included, then neither is George.” Pet. App. 5a. The panel drew that limit from § 4316(b)(1), which deems a person absent for service “on furlough or leave of absence” and guarantees the benefits the employer provides others on leave; the panel treated that guarantee as exclusive. Pet. App. 3a-4a. Because whether employees

on comparable leave are covered is “a question of interpreting the terms of the [union contract regarding the retention bonus],” the panel held George’s claim an arbitrable “minor dispute” under the Railway Labor Act—“not independent of the [collective-bargaining] agreement.” Pet. App. 5a. It distinguished the Ninth Circuit’s contrary decision in *Huhmann* as “inapt,” *id.*, and affirmed the dismissal without grappling with George’s argument that § 4311 independently forbade the denial.

The division among the courts of appeals is well developed, and it will not resolve itself. And this issue is a recurring one of exceptional national importance to reservists. The Court should grant review to resolve it and restore a uniform national rule for service members and the employers who must apply it.

A. Congress enacted USERRA to “prohibit discrimination against persons because of their service in the uniformed services.” 38 U.S.C. § 4301(a)(3). Its core anti-discrimination provision, § 4311, provides that a person who serves “shall not be denied . . . retention in employment, promotion, or any benefit of employment by an employer on the basis of that . . . performance of service.” § 4311(a). A “benefit of employment” is defined sweepingly to include “any advantage, profit, privilege, gain, status, account, or interest . . . including . . . bonuses.” § 4303(2). An employer’s action is “on the basis of” service if service is “a motivating factor,” unless the employer proves “that the action would have been taken in the absence of” the service. § 4311(c)(1).

Another provision, § 4316(b)(1), addresses benefits during leave: a person absent for service is “deemed to be on furlough or leave of absence,” and is “entitled to such other rights and benefits not determined by seniority as are generally provided by the employer . . . to employees

... who are on furlough or leave of absence.” And § 4302(b) provides that USEERRA “supersedes any . . . contract, agreement, . . . [or] plan . . . that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter.”

B. In 2021, Piedmont and its pilots’ union adopted Letter of Agreement 44, a Pilot Retention and Bonus Program that paid a \$70,000 bonus to a Piedmont First Officer on the pilots’ seniority list who was hired by American Airlines “while he or she is employed as a First Officer” and who remained employed by Piedmont and on the seniority list when the payment was made. Pet. App. 60a-61a, 65a. Daniel George—a Piedmont First Officer and an Air Force Reserve lieutenant colonel—began long-term active-duty military leave on October 1, 2019, and he remained on the Piedmont pilots’ seniority list throughout his deployment. Pet. App. 8a, 30a, 54a. In late 2021, while still deployed, George was hired by American. Pet. App. 9a, 54a. Piedmont’s chief pilot first told him the bonus “should happen automatically.” Pet. App. 9a. The next day, because George was on military leave, Piedmont made his resignation effective immediately rather than on the date he had given, and it then denied him the bonus. Pet. App. 2a, 9a. In the end, the bonus turned on a single requirement—employment with Piedmont, Pet. App. 54a-55a—and George failed it only because he was on leave for military service.

George and his union grieved. The System Board of Adjustment denied the grievance—not by construing the bonus terms, but by ruling that George “was not a Piedmont employee at the time of hire by American Airlines” because he had not applied for reemployment under 20 C.F.R. § 1002.115. Pet. App. 54a. That regulation governs the deadline to seek reemployment after service ends; it says nothing about a reservist still on active duty,

whom 20 C.F.R. § 1002.149 deems to be “on furlough or leave of absence from the civilian employer.”

C. George sued under USERRA, alleging that Piedmont denied him a benefit of employment because of his military service. Pet. App. 28a, 34a-36a. The district court had jurisdiction under 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b)(3). Piedmont moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), contending that the Railway Labor Act required arbitration. The district court treated the motion as a factual attack, weighed the evidence, and dismissed for lack of jurisdiction. Pet. App. 7a-19a.

The Third Circuit affirmed in a nonprecedential opinion. It held that George’s claim is a “minor dispute” under the Railway Labor Act because resolving it “depends on interpreting” the collective-bargaining agreement. Pet. App. 1a-6a. In reaching that conclusion the panel adopted the ceiling reading of § 4316(b)—reasoning that USERRA required the bonus only if comparable leave-takers received it. Pet. App. 5a. It thus rejected his § 4311 claim by construing it only to protect his interest in being treated like other employees on non-military leave, effectively collapsing its protections into the protections separately afforded by § 4316(b).

George sought rehearing. The court denied panel rehearing on June 1, 2026, Pet. App. 20a-21a, and took no action on a later petition for rehearing en banc, Pet. App. 22a.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEALS ARE DIVIDED OVER WHETHER SECTION 4316(B) IS A FLOOR OR A CEILING.

USERRA’s anti-discrimination provision forbids denying “any benefit of employment” “on the basis of” military service, § 4311(a), while a separate provision

entitles a service member absent for service to the non-seniority benefits “generally provided by the employer” to employees “on furlough or leave of absence,” § 4316(b)(1). The courts of appeals are divided over how those provisions fit together when military service causes an employee to lose a benefit the employer extends to its workforce as a right of employment. The Ninth Circuit holds that § 4316(b) is a floor: § 4311 independently forbids denying such a benefit because of military service, even assuming § 4316(b)’s comparable-leave guarantee would not itself require it. The Fifth, Seventh, and Eighth Circuits read § 4316(b) as a ceiling: for a benefit lost while a service member is on leave, parity with employees on comparable non-military leave is the whole of the entitlement, and § 4311 adds nothing. The decision below adopted the ceiling reading, on facts squarely within the Fifth and Eighth Circuits’ rule—a benefit denied to a service member because military service kept him away on leave.

The two rules are irreconcilable. A service member who loses a general benefit of employment because military service caused his absence prevails under the Ninth Circuit’s rule and loses under the Fifth, Seventh, and Eighth Circuits’. The Seventh Circuit has “explicitly considered and rejected” the very reading the Ninth Circuit adopts—that § 4311 reaches further than § 4316. The division has hardened over nearly a decade; the decision below is its newest expression; and the courts of appeals will not resolve it themselves. Only this Court can.

A. The Ninth Circuit holds that Section 4316(b) is a floor that does not displace Section 4311.

The Ninth Circuit holds that § 4311 independently bars an employer from denying a service member a benefit he would have received but for his military leave, and that § 4316(b) is no defense to such a claim.

In *Huhmann v. Federal Express Corp.*, 874 F.3d 1102 (9th Cir. 2017), military service kept a FedEx pilot from attaining the crew status that, under his collective-bargaining agreement, would have entitled him to a larger signing bonus, and FedEx paid the smaller one. The Ninth Circuit held the reduction actionable under § 4311. *Id.* at 1107-09. And it held, in the alternative, that § 4316 was no defense: “even if the signing bonus were not a seniority-based benefit, Section 4316 still would not bar Huhmann’s claim.” *Id.* at 1112. What mattered was that the benefit was one the employer had extended to its pilots. “Even assuming” § 4316 would have allowed FedEx to deny “the signing bonus to pilots on military leave,” the court held, “because FedEx chose to extend such benefit as a right of employment, it was bound by the other provisions of USERRA (such as Sections 4311, 4312, and 4313) not to reduce the amount of this employment benefit on the basis of the pilot’s absence from work on account of military service.” *Id.* That is § 4316(b) as a floor: once an employer extends a benefit to its employees as a right of employment, § 4311 forbids reducing it because of military service—whether or not § 4316(b) would independently compel it.

The Ninth Circuit applied the same understanding in *Belaustegui v. International Longshore & Warehouse Union*, 36 F.4th 919 (9th Cir. 2022), holding that a service member’s earned credit toward a higher employment status was a “benefit of employment” that § 4311 independently protects, and declining to construe that phrase narrowly to exclude benefits keyed to service. *Id.* at 927-30. For the Ninth Circuit, § 4311 does its own work: an employer may not deny a benefit of employment because of military service, whatever § 4316(b)’s comparable-leave floor would separately require.

B. The Third, Fifth, Seventh, and Eighth Circuits hold that Section 4316(b) is the ceiling.

The Fifth Circuit adopted the ceiling reading in *Rogers v. City of San Antonio*, 392 F.3d 758 (5th Cir. 2004), where reservists sought pay and other benefits lost because they were treated as “absent” while on military leave. The court held that § 4316(b)(1), not § 4311(a), governs such benefits, and requires only that employees on military leave be treated “equally, but not preferentially,” with employees on comparable non-military leave. *Id.* at 769. “USERRA,” it concluded, “does not authorize the courts to add to or detract from that [§ 4316(b)(1)] guarantee.” *Id.* at 770. On that view, if an employer denies a non-seniority benefit to everyone on leave alike, § 4311 does not require it for the service member.

The Seventh Circuit likewise rejects the Ninth Circuit’s rule. In *Gross v. PPG Industries, Inc.*, 636 F.3d 884, 890 (7th Cir. 2011), the court held that § 4311 does not “offer[] broader protection than § 4316,” relying on *Crews v. City of Mt. Vernon*, 567 F.3d 860 (7th Cir. 2009). That is the opposite of *Huhmann*, which holds that § 4311 may independently prohibit the denial of a benefit even when § 4316 would not require the employer to provide it.

The Eighth Circuit followed. In *Dorris v. TXD Services, LP*, 753 F.3d 740 (8th Cir. 2014), it held that “§ 4316(b)(1) defines the employer’s general § 4311(a) duty” for an employee on long-term military leave—again, equal but not preferential treatment measured against comparable non-military leave. *Id.* at 745-46.

The panel below read § 4316(b) the same way. Its formal disposition was that the Railway Labor Act required arbitrating George’s claim; but it reached that disposition by measuring his USERRA entitlement not by what active employees receive, but by what employees

“on furlough or leave of absence” receive under § 4316(b)(1). Pet. App. 4a. “If the term covers similarly situated workers on long-term leave or furlough,” it reasoned, “then George must be given the bonus, too. But if no one on long-term leave or furlough is included, then neither is George.” Pet. App. 5a. That is § 4316(b) as a ceiling—the comparable-leave comparator marks the outer limit of the employer’s duty, and § 4311 adds nothing of its own. And the panel expressly declined to follow the Ninth Circuit, distinguishing *Huhmann* as “inapt.” *Id.*

C. The conflict is entrenched, and only this Court can resolve it.

The competing approaches cannot be reconciled. The Ninth Circuit asks whether military service caused the denial of a benefit the employer extended as a right of employment, and forbids the denial if it did. The Fifth and Eighth Circuits, and the panel below, ask only whether the employer treated military leave the same as comparable non-military leave, and permit the denial if it did. A service member in George’s position states a claim under the first rule and not the second. The ceiling rationale, moreover, is unsettled even among the courts that have applied it: the Seventh Circuit recognized in *Crews* that §§ 4311 and 4316 are “not necessarily mutually exclusive,” 567 F.3d at 865, then later committed itself in *Gross* to the narrower view that § 4311 does not “offer[] broader protection than § 4316,” 636 F.3d at 890. District courts, too, continue to decline to treat § 4316(b) as exclusive. *E.g., Peace v. Panorama Orthopedics & Spine Center, Inc.*, 2025 WL 35585, at *10 (D. Colo. Jan. 6, 2025) (considering the claim under both provisions because “it would be premature to conclude that only § 4316(b)(1) governs” (quoting *Crews*, 567 F.3d at 865)). The decision below, for its part, is the only court of appeals decision outside the Ninth Circuit to engage *Huhmann*—and it

did so only to decline to follow it. Pet. App. 5a. The conflict has persisted for nearly a decade with no prospect of resolving itself.

II. THE DECISION BELOW IS WRONG: § 4311 FORBIDS WHAT PIEDMONT DID, AND § 4316(B) DOES NOT AUTHORIZE IT.

A. The Third Circuit’s rule cannot be squared with USERRA’s plain text. Piedmont’s \$70,000 bonus is a “benefit of employment,” which USERRA defines to include “any advantage, profit, privilege, gain, status, account, or interest,” including “bonuses.” 38 U.S.C. § 4303(2). And military service plainly caused Piedmont to deny George that benefit. But for his deployment, George would have been an active, employed Piedmont First Officer when American hired him, and Piedmont would have paid the bonus. He went on leave for military service; his military leave made him ineligible; and Piedmont denied payment for that reason. That is a denial “on the basis of” service under § 4311(a). Piedmont cannot show that “the action would have been taken in the absence of” George’s service. § 4311(c)(1). In the absence of that service, George would not have been on leave. *Bostock* confirms the proper counterfactual method: a court “change[s] one thing at a time and see[s] if the outcome changes.” *Bostock v. Clayton County*, 590 U.S. 644, 656 (2020). Removing George’s military service, while holding independent facts constant, leaves him employed by Piedmont and entitled to the bonus; the ceiling approach errs by instead assuming George would have taken some other leave. The relevant § 4311 comparison is not George against a different employee on a different leave—that is § 4316’s separate parity inquiry—but George as Piedmont would have treated him absent his service. And § 4311(c)’s motivating-factor threshold is “more forgiving” still than *Bostock*’s but-for test, *id.* at 657, so George satisfies it a fortiori. The response that Piedmont denies the bonus to

other employees on non-military leave assumes away the problem. The problem is that § 4311 plainly barred his employer from treating George worse than its other employees on the basis of his military service. Yet that is precisely what happened here.

B. The contrary view that Section 4316(b) implicitly displaces § 4311's protections is unpersuasive. Section 4316(b)(1) makes no mention of, or reference to, § 4311. It guarantees a service member at least the non-seniority benefits the employer provides to employees on comparable forms of leave. It is phrased as an entitlement: the service member "is entitled to" those benefits. Nothing in that language authorizes an employer to deny a different benefit because of military service.

The ceiling approach effectively reads § 4316(b) to suspend or partially repeal § 4311 whenever a service member is absent on military leave. The Eighth Circuit stated the premise most plainly—that § 4316(b)(1) "defines the employer's general § 4311(a) duty," *Dorris*, 753 F.3d at 745—as if the specific comparable-leave guarantee subsumed the general antidiscrimination command. But nothing in § 4316(b) says that § 4311 ceases to apply during leave, that comparable-leave benefits are the exclusive benefits available, or that employers may otherwise discriminate on the basis of military service so long as they comply with § 4316(b)'s minimum guarantee. Congress does not ordinarily displace a broad antidiscrimination rule by implication, much less through a provision that speaks only in terms of a separate entitlement.

The history of the two protections confirms that they were enacted at distinct times to provide distinct protections. The leave-benefits protection now codified in § 4316 traces to legislation enacted in 1940, decades

before Congress enacted the antidiscrimination protection that became § 4311 in 1968. *See* Selective Training and Service Act of 1940, ch. 720, § 8(c), 54 Stat. 885, 890; Act of Aug. 17, 1968, Pub. L. No. 90-491, § 1(1), 82 Stat. 790, 790. When Congress brought both into USERRA in 1994, it treated them as distinct protections with distinct functions: the House committee report describes § 4311 as reenacting and strengthening the existing prohibition against discrimination, while separately describing the comparable-leave provision now codified in § 4316(b) as affirming the comparable-leave entitlement recognized in *Waltermeyer v. Aluminum Co. of America*, 804 F.2d 821 (3d Cir. 1986). *See* H.R. Rep. No. 103-65, pt. 1, at 19, 23, 33-34 (1993). That history supplies no basis for treating § 4316(b) as defining the outer limit of § 4311. Section 4316(b) establishes what benefits military leave affirmatively carries; § 4311 independently prohibits an employer from denying any benefit because of military service. Each provision does its own work. The ceiling approach instead turns one protection into an implied restriction on the other—something neither the text nor the history suggests Congress intended.

That the bonus here is defined by a collective-bargaining agreement changes nothing. Section 4302(b) provides that USERRA “supersedes any . . . contract, agreement, . . . [or] plan . . . that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter.” An employer and a union may create and define an employment benefit, but they may not use the agreement’s terms to accomplish what § 4311 forbids—the denial of that benefit because of military service. The Department of Labor’s regulations state the principle directly: USERRA “establishes a floor, not a ceiling, for the . . . rights and benefits of those it protects.” 20 C.F.R. § 1002.7(a). The decision below inverts that command,

allowing the agreement's employment condition to displace the federal right USERRA guarantees.

Treating § 4316(b) as a ceiling penalizes military service in exactly the manner that USERRA was adopted to prevent. A service member is deemed to be on leave precisely because of military service. On the ceiling view, an employer could defeat § 4311 whenever it drafted a benefit to exclude all employees on leave—even when the employee would have received the benefit but for their military service. The floor reading avoids that result and leaves both provisions operative.

III. THE QUESTION IS EXCEPTIONALLY IMPORTANT AND CLEANLY PRESENTED.

A. The question is important and recurring. Section 4316(b)'s deeming rule governs the civilian employment of every member of the Reserve and National Guard who leaves work to serve—more than 760,000 members of the Selected Reserve, and over one million members of the Ready Reserve. Dep't of Def., 2024 Demographics Profile of the Military Community 57, 59 (2025). It applies to employers nationwide and reaches recurring disputes over bonuses, paid leave, promotions, insurance, and other non-seniority benefits.

These disputes arise constantly, and in the airline industry in particular. The courts of appeals—including the Third Circuit—repeatedly decide whether an employer must extend a benefit to employees on military leave. *See, e.g., White v. United Airlines, Inc.*, 987 F.3d 616 (7th Cir. 2021); *Travers v. Federal Express Corp.*, 8 F.4th 198 (3d Cir. 2021); *Clarkson v. Alaska Airlines, Inc.*, 59 F.4th 424 (9th Cir. 2023); *Scanlan v. American Airlines Grp., Inc.*, 102 F.4th 164 (3d Cir. 2024).

The ceiling rule creates a ready means to avoid § 4311. An employer may condition a benefit on being an active employee and deny it to every employee on leave,

including non-military leave, then argue that § 4316(b) means that reservists on military leave do not get the benefit—even when military service is the only reason the reservist was not an active employee. The consequence is not limited to this \$70,000 bonus; the same rule governs any employment benefit tied to active employee status.

A uniform national rule is especially important for multistate employers and for service members whose rights should not change with the circuit in which they work. The same employer, applying the same policy to the same facts, can lose under the Ninth Circuit’s rule and win under the Third’s. More particularly, if George were domiciled with Piedmont in California, not Pennsylvania, he would win. This should not be the correct result. Only this Court can resolve whether § 4316(b) preserves or displaces § 4311’s independent protection.

B. This case cleanly presents the federal question, and every reason the Court might hesitate is answered by the record. From the start, George framed his claim as a discrimination claim under § 4311, not a dispute about the meaning of a contract. His complaint invoked § 4311, quoted its motivating-factor standard, and alleged that Piedmont denied him a “benefit of employment” “on the basis of” his service. Pet. App. 34a-36a (Compl. ¶¶ 28, 29, 32, 36). It stated in terms that the “lawsuit . . . does not contest the interpretation of any collective bargaining agreement,” but concerns only a “violation of USERRA.” Pet. App. 35a (Compl. ¶ 33). George pressed that theory through the district court and the court of appeals, and again on rehearing.

The question was thus pressed and passed upon below. The panel understood exactly what George alleged: that Piedmont “violated [USERRA] . . . by denying him the bonus because of his military service”—the very language of § 4311. Pet. App. 3a. The district

court rejected that theory on the merits, holding that George’s claim “does not originate from either the language or the underlying goals of USERRA,” but instead “emanates from a bonus provision created in LOA 44.” Pet. App. 16a. And the court of appeals engaged the same question, reasoning that USERRA required the bonus only “[i]f the term covers similarly situated workers on long-term leave or furlough,” and that “if no one on long-term leave or furlough is included, then neither is George.” Pet. App. 5a. That is the ceiling construction of § 4316(b)—the reading that divides the circuits. The federal question is therefore antecedent to, and embedded in, the judgment below.

The Railway Labor Act supplies no independent ground that shields the judgment from review. The panel deemed the claim an arbitrable “minor dispute” only because it concluded that resolving it “depends on interpreting” the agreement—a conclusion it could reach, by its own account, only by “peeking at the merits” and adopting the ceiling reading of § 4316(b). Pet. App. 5a. Under the floor reading, § 4311 forbids the denial because George’s service is its but-for cause—whatever the agreement provides—and the claim is not a minor dispute at all, it is a statutory right. Whether the claim requires interpreting the agreement thus depends on the question presented. And a claim that federal law independently forbids the employer’s action does not become arbitrable merely because the same facts could also support a grievance. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 256-62 (1994). The Ninth Circuit so held on closely analogous facts—an independent USERRA right that turned on undisputed contract terms rather than their interpretation. *Huhmann*, 874 F.3d at 1106-07.

That the decision below is nonprecedential is no obstacle. The fact that a decision is unpublished “carries no weight in [the Court’s] decision to review the case.”

Comm'r v. McCoy, 484 U.S. 3, 7 (1987) (per curiam); see Stephen M. Shapiro et al., *Supreme Court Practice* § 4.11 (11th ed. 2019) (“[T]he Court grants certiorari to review unpublished and summary decisions with some frequency.”). This Court did so recently in *Dupree v. Younger*, 598 U.S. 729 (2023), and in *Berk v. Choy*, 607 U.S. 187 (2026), each reviewing an unpublished decision of a court of appeals. A contrary rule would let the courts of appeals insulate erroneous decisions from review by withholding publication. See *Plumley v. Austin*, 574 U.S. 1127, 1131-32 (2015) (Thomas, J., dissenting from denial of certiorari); *County of Los Angeles v. Kling*, 474 U.S. 936, 938 (1985) (Stevens, J., dissenting). The panel’s nonprecedential disposition, moreover, reflects a reading of USERRA the Third Circuit applies in reasoned decisions elsewhere. See *Scanlan*, 102 F.4th 164; *Travers*, 8 F.4th 198.

This case turns on a pure question of federal law on undisputed facts. Piedmont offered the bonus; American hired George while he remained on military leave; and Piedmont denied payment on the ground that, because of his military leave, he was no longer its employee. Whether §§ 4311 and 4316 permit that denial is outcome-determinative: under the ceiling rule the panel applied, George’s claim rises or falls with how the agreement treats employees on other forms of leave; under the floor rule, he prevails because his service is the but-for cause. Resolving the question presented resolves this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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