No. 26-105

IN THE

Supreme Court of the United States

RUBICON RESOURCES, LLC,
Petitioner,

v.

KEO RATHA, ET AL.
Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

AGNIESZKA M. FRYSZMAN
Counsel of Record
NICHOLAS J. JACQUES
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue NW
East Tower, Suite 500
Washington, DC 20005
(202) 408-4600
afryszman@cohenmilstein.com

BECCA STEINBERG
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Additional counsel listed on signature page

Attorneys for Respondents

September 2026

QUESTIONS PRESENTED

1. Whether this Court should grant the petition to review whether the court of appeals, when reviewing an order denying a Federal Rule of Civil Procedure 60(b) motion, properly considered the statutory clarifying amendment on which the motion was based.

2. Whether this Court should grant the petition to review whether the court of appeals properly identified the bases for the district court's denial of a Rule 60(b) motion.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Other Authorities

INTRODUCTION

Petitioner Rubicon Resources (Rubicon) markets and sells seafood and purports to fully control the production process for that seafood. Rubicon attempted to sell seafood produced by Phatthana Seafood Co., another company owned by Rubicon's co-founder. This seafood was the product of human trafficking and forced labor: Phatthana trafficked Cambodian villagers to Thailand, confiscated their passports, forced them to work under harsh conditions, and threatened them with arrest. In light of these known concerns about Phatthana Seafood's practices, Walmart refused to buy this seafood from Rubicon. Rubicon, though, continued trying to sell it.

Respondents are trafficking victims who worked at Phatthana's factory. In 2016, they sued Rubicon, Phatthana, and other defendants, alleging violations of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The district court granted Rubicon's motion for summary judgment on three separate bases, including that the TVPRA does not impose liability when a defendant *attempts* to profit, but does not succeed in profiting, from goods that are the known product of human trafficking or forced labor. The Ninth Circuit affirmed summary judgment as to Rubicon on only that one basis.

In response, Congress passed an amendment to make clear that the TVPRA includes attempt liability. Respondents promptly filed in the district court a motion under Federal Rule of Civil Procedure 60(b). The court denied the motion, relying on (1) the two additional bases from its original judgment and (2) its conclusion that the amendment was not retroactive. The Ninth Circuit, sitting en banc, reversed. The court, applying the test set forth in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), held that the clarifying amendment was retroactive and that the alternative bases in the district court's decision were incorrect as a matter of law. It then applied a long-established six-factor analysis to conclude that Respondents had shown extraordinary grounds to reopen the judgment under Rule 60(b)(6).

Rubicon now seeks review of two separate questions. Neither warrants review.

First, Rubicon poses the question whether a retroactive statutory amendment can be a basis for reopening a judgment under Rule 60(b)(6). Seeking to identify a conflict among the circuits, Rubicon cites only one case that addresses the question—and that case expressly declines to resolve it. The other cases cited in the petition do not confront the question at all. Rubicon also suggests that a court's reliance on a clarifying statutory amendment as a basis for Rule 60(b) relief poses separation-of-powers concerns. But although Congress cannot *require* a court to reopen a final judgment, the separation of powers is not implicated by a court's consideration of congressional enactments when deciding whether to grant Rule 60(b) relief.

Second, Rubicon contends, wrongly, that the Ninth Circuit improperly reviewed the underlying judgment, rather than limiting review to the district court's Rule 60(b) decision. Like other circuit courts hearing appeals from Rule 60(b) decisions, however, the court below recognized that it could review only the Rule 60(b) decision. And because that decision incorporated some of the district court's earlier reasoning, the court of appeals reviewed that reasoning to the extent that it had been incorporated. At best, the petition presents the very case-specific question whether the Ninth Circuit was correct to read the district court's decision as incorporating its earlier reasoning. That question is not remotely worthy of review.

The petition should be denied.

STATEMENT

Factual Background

Phatthana Seafood Co. owns a seafood processing factory in Thailand. Pet. App. 8a. Promising competitive pay and free accommodations, the company hired Cambodian villagers, including Respondents, to work at the factory. *Id.* at 9a.

Instead of receiving the wages they were promised, Respondents "became victims of peonage, forced labor, and involuntary servitude." *Id.* They were paid less than promised, charged for unexpected expenses, and subjected to harsh conditions. *Id.* Workers who complained faced retaliation; some were forced to crawl on their hands and knees, without clothing, until they were bloody. *Id.* Phatthana confiscated their passports, and workers who tried to leave were arrested. *Id.*

To sell its seafood, Phatthana's owner co-founded Rubicon, a United States company. *Id.* at 8a–9a. Rubicon employees coordinated with Phatthana, and Rubicon's marketing materials stated that Rubicon "control[s] every aspect of production." *Id.* at 9a.

While Rubicon was working to sell this seafood, some potential buyers became aware of the forced labor at Phatthana's factory. *Id.* at 10a. In October 2011, Walmart rejected a shipment of seafood from

Rubicon because of concerns about the working conditions at the factory. *Id.*

In January 2012, Respondent Ratha told a news outlet that he was subjected to forced labor at the factory and that hundreds of Cambodians wanted to leave but were unable to get their passports back. *Id.* It is undisputed that Rubicon knew of these reports by February 2012. *Id.*

In the wake of the news reports, Rubicon briefly paused—but then resumed—its efforts to sell Phatthana's seafood in the United States. *Id.* It was not successful in selling Phatthana's seafood in the United States during the relevant time period. *Id.*

Proceedings Below

A. In 2016, Respondents sued Rubicon under the TVPRA, 18 U.S.C. § 1595(a). Pet App. 10a. Respondents alleged that Rubicon intended to benefit from participation in a venture that Rubicon knew or should have known was engaged in human trafficking and forced labor. *Id.* at 11a.

Rubicon moved for summary judgment, and the district court granted the motion. *Id.* The district court determined that Respondents had failed to show that Rubicon (1) had participated in a human trafficking venture; (2) knew or should have known that human trafficking existed at Phatthana's factory; or (3) succeeded in benefitting from Phatthana's human trafficking. *Id.*

On appeal, the Ninth Circuit did not address the district court's first ruling. As to the second, the court stated that "Rubicon was undisputedly aware of Ratha's whistleblower report" on February 23, 2012. *Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1177

(9th Cir. 2022). Addressing the last of the district court's determinations, however, the Ninth Circuit affirmed. The court held that the civil remedy under section 1595(a) requires that a defendant actually receive a benefit (not just attempt to receive one) and that Respondents had failed to show that Rubicon received any benefit. *See id.* at 1175–76. Respondents filed a petition for a writ of certiorari, which this Court denied. Pet. App. 12a.

B. Less than three weeks later, Congress amended section 1595(a) to clarify, as courts other than the Ninth Circuit had held, that the civil remedy provision, like the underlying criminal prohibitions, imposes liability on those who attempt, but fail, to benefit from a human trafficking venture. *See* Pub. L. No. 117-347 § 102, 136 Stat. 6199, 6200 (2023). The amendment, which passed without a dissenting vote, added to the provision the precise words that the Ninth Circuit had held were needed to show civil liability for attempting to receive a benefit. Pet. App. 12a; *see Ratha*, 35 F.4th at 1176.

Respondents promptly filed a motion to reopen under Federal Rule of Civil Procedure 60(b)(6). *See* Pet. App. 12a. The district court denied the motion, based on its conclusions as to two of the six factors used to evaluate a Rule 60(b) motion: the nature of the legal change and its connection to the challenged judgment. *Id.* at 146a. In holding that those factors (but not the others) weighed against Respondents, the court first relied on two alternative grounds for its original holding: its conclusion that Respondents had not shown that Rubicon (1) knowingly participated in a human trafficking venture or (2) knew or should have known about Phatthana's human trafficking. *Id.* The court "agree[d] with Rubicon that" because its "decision is fully supported by the first and second grounds," the statutory amendment would not alter its decision in favor of Rubicon. *Id.* In addition, the court held that the amendment was not retroactive. *Id.* at 150a.

A divided panel of the Ninth Circuit affirmed, agreeing with the district court that the statutory amendment was not retroactive. *See id.* at 119a–120a. As to whether the statute could support Rule 60(b) relief if it were retroactive, the court noted that *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), on which Petitioner had relied, "is not directly on point here, because Rule 60(b)(6) is not a 'legislative mandate' that requires a court to reopen a particular case." Pet. App. 94a. But as to the question whether Rule 60(b) could apply, the panel stated that it "need not resolve" the question, given its holding that the statute was not retroactive. *Id.* at 95a.

After granting a petition for rehearing en banc, however, the court of appeals reversed. Applying the test set forth in *Landgraf*, 511 U.S. 244, the court considered whether the clarifying amendment was retroactive and held that it was. *See* Pet. App. 14a–36a. Then, because "Rubicon argue[d] that, even if § 1595(a) is retroactive, the two remaining grounds" on which the district court relied were "sufficient to justify denial of [the] Rule 60(b) motion," the court of appeals turned to "whether either of those grounds [was] legally sound." *Id.* 36a. The court explained that it was appropriate to "review the district court's reasons for granting summary judgment because the court incorporated them into the decision under review by relying on them to deny [Respondents'] Rule 60(b) motion." *Id.* As to each of those bases, the court held that the district court erred as a matter of law. *Id.* at 38a–40a.

"Having found legal error in all three grounds on which the district court relied when denying [the] Rule 60(b)(6) motion," *id.* at 40a, the court of appeals then considered the six case-specific factors in its longstanding test for evaluating Rule 60(b) motions. The court of appeals agreed with the district court that two factors—the plaintiff's diligence, and the delay between the finality of the judgment and the motion—weighed in favor of Respondents. *Id.* at 41a–42a. The court of appeals also agreed that the reliance factor was neutral and that the comity factor was inapplicable. *Id.* As to the other two factors—the nature of the legal challenge, and the relationship between the change in law and the challenged judgment—the court found that, given its conclusion that the district court had erred as a matter of law, those factors also weighed in favor of Respondents. *Id.* at 42a. Accordingly, it held, Respondents were entitled to relief under Rule 60(b). *Id.*

Although no judge disagreed that a retroactive amendment could be considered as a basis for Rule 60(b) relief, five judges dissented on the ground that they would have held that the 2026 amendment was not retroactive. *Id.* at 43a, 49a. In addition, four judges dissented from the majority's consideration of the district court's additional grounds for denying the Rule 60(b) motion, because, in their view, the district court's Rule 60(b) opinion had not "incorporat[ed] by reference" any earlier reasoning. *Id.* at 65a. At the same time, those judges acknowledged that "where a district court truly relied upon a previous order … to deny a party Rule 60(b) relief, this court should determine whether that previous order is sufficiently intertwined with the Rule 60(b) denial to make it reviewable." *Id.* at 68a.

REASONS FOR DENYING THE WRIT

I. The question whether a retroactive legislative change may justify relief under Rule 60(b) does not warrant review.

Rubicon's petition does not challenge the court of appeals' ruling that the 2026 clarifying amendment applies retroactively. Instead, it argues that the clarification cannot form the basis of Rule 60(b) relief. Its claim of a conflict among the circuits, however, is belied by its inability to cite a single case holding that Rule 60(b) cannot provide relief in this circumstance. And the separation of powers issue it suggests is illusory. For both reasons, the first question presented does not warrant review.

A. The courts of appeals are not divided on the question whether a retroactive legislative change may justify Rule 60(b) relief.

Asserting that "[t]he circuits are divided over whether a postjudgment statutory amendment can supply the 'extraordinary circumstances' required to reopen a final judgment under Rule 60(b)(6)," Pet. 14, Rubicon argues that the decision below conflicts with decisions of three courts of appeals. None of the decisions cited by Rubicon, however, addresses the issue at hand.

Rubicon first points to the unpublished decision in *Oklahoma Chapter of American Academy of Pediatrics v. Fogarty*, 2010 WL 3341881 (10th Cir. July 20, 2010). *See* Pet. 15. In the Tenth Circuit, however, as in others, "[u]npublished decisions are not precedential." 10th Cir. R. 32.1(A). The *Fogarty* decision therefore cannot support Rubicon's claimed circuit split.

In any event, the Tenth Circuit's decision does not conflict with the decision below. In *Fogarty*, the Tenth Circuit addressed whether Congress's amendments to the Medicaid Act warranted relief under Rule 60(b)(6). *See* 2010 WL 3341881 at *2. Central to the court's holding was that "[t]he actual text of the amendment contains no indication that it was intended to operate retroactively, let alone function as the basis for granting relief from long-final judicial decisions." *Id.* The court thus addressed the effect of a *non-retroactive* amendment; it did not consider, or decide, whether a *retroactive* amendment can provide a basis for relief under Rule 60(b)(6).

Next, Rubicon cites three Eleventh Circuit decisions that, in Rubicon's view, show that "the Eleventh Circuit would reject the Ninth Circuit's position" that the district court erred in not granting the Rule 60(b) motion in light of the amendment. Pet. 15–16. None of the three cases answer the question addressed by the Ninth Circuit.

The first case cited by Rubicon, *United States v. Rojas*, 53 F.3d 1212 (11th Cir. 1995), did not involve a Rule 60(b) motion. There, the Eleventh Circuit analyzed a statute that created a certification procedure for the United States to prove that it had another country's consent to search a vessel. *See id.* at 1214. The court held that this procedure did not violate the separation of powers because "[n]othing in the certification procedure deprives the court of its ability and obligation to determine whether the requirements of the [Act] have been met." *Id.* at

1214–15. That case is inapposite here. Nothing in the decision below grants to Congress the power to determine the effect of legislation on the case at hand.

The next case, *Rivera v. Allin*, 144 F.3d 719 (11th Cir. 1998), *abrogated by Jones v. Bock*, 549 U.S. 199 (2007), likewise did not involve Rule 60(b). In *Rivera*, the court considered an argument that the three-strikes provision of the Prison Litigation Reform Act (PLRA) violated the separation of powers. *Id.* at 725–26. Holding that it did not, the court explained that the PLRA did not "command[] the federal courts to reopen final judgments"; instead, it "attach[ed] an unremarkable consequence, that is, denial of IFP status, to three or more judgments/dismissals on certain grounds that courts, not Congress, exclusively control." *Id.* at 725. That approach is consistent with the one taken by the court below, which similarly left control over final judgments in the hands of courts, not Congress.

Rubicon also points to a footnote in *Raven v. Oppenheimer & Co.*, 74 F.3d 239 (11th Cir. 1996). Unlike the other Eleventh Circuit cases cited by the petition, *Raven* did arise in the Rule 60(b) context. But *Raven* expressly declined to decide the question whether new legislation may warrant relief under Rule 60(b). *See id.* at 243 n.9.

Turning to the Seventh Circuit, Rubicon cites three cases for the proposition that legislative changes cannot provide grounds to reopen a final judgment under Rule 60(b)(6). *See* Pet. 16 (citing *Norgaard v. DePuy Orthopaedics, Inc.*, 121 F.3d 1074, 1077 (7th Cir. 1997), *Rodriguez v. Cook Cnty.*, 664 F.3d 627 (7th Cir. 2011), and *Baez-Sanchez v. Barr*, 947 F.3d 1033 (7th Cir. 2011)). None of these three cited cases has anything to do with the question presented. In fact, none concerns federal legislation at all. *Norgaard* deals with judicial—not legislative—changes in the law. *See* 121 F.3d at 1075–77. *Rodriguez* addresses the impact of state statutes on federal court decisions. *See* 664 F.3d at 629. And *Baez-Sanchez* came to the court after the Board of Immigration Appeals relied on a letter from the Attorney General to conclude that the Seventh Circuit's earlier decision had been incorrect. *See* 947 F.3d at 1035–36.

Finally, Rubicon cites three cases that it concedes fall "outside the Rule 60(b) context." Pet. 17. The first, *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444 (2d Cir. 2011), applied a provision of the Federal Arbitration Act to reject a request to vacate an arbitration award based on subsequent legislation. In *Benjamin v. Jacobson*, 172 F.3d 144, 163 (2d Cir. 1999), the court held that a PLRA provision that terminated certain existing injunctions was valid. And in *United States v. Vazquez-Rivera*, 135 F.3d 172 (1st Cir. 1998), the court held that the *ex post facto* clause barred application at re-sentencing of a statute enacted after a criminal defendant had been convicted. From each of these cases, Rubicon pulls dicta that Congress cannot command a court to set aside a final judgment. *See* Pet. 17–18 (citing *Schwartz*, 665 F.3d at 454; *Benjamin*, 172 F.3d at 161; *Vazquez-Rivera*, 135 F.3d at 177). Those dicta, all derived directly from *Plaut*, offer no basis for review. The decision below does not hold, or even suggest, that the court of appeals believed that Congress had required the earlier judgment to be set aside.

In sum, the petition fails to cite a single case addressing whether a statutory clarification may provide grounds for Rule 60(b) relief. It thus fails to support its claim of a circuit split on its first question presented.

B. The court of appeals' decision is consistent with this Court's precedents and the separation of powers.

1. Rubicon argues that the decision below "flouts" the legal principle that post-judgment legal changes "rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)." Pet. 19 (quoting *Agostini v. Felton*, 521 U.S. 203, 239 (1997)). Again, Rubicon misrepresents the decision. The court of appeals expressly recognized that "extraordinary circumstances" are required for Rule 60(b)(6) relief. Pet. App. 41a. But it held that the case-specific circumstances here met that standard: Just days after this Court denied Respondents' petition for certiorari, Congress stepped in to clarify that the TVPRA civil remedy is available when defendants attempt to profit from human trafficking and forced labor, and to ensure that human traffickers did not benefit from the Ninth Circuit's misreading of the statute. In short, the court agreed with Rubicon's statement of the legal standard, but disagreed on the application of the standard in this case.

Rubicon worries that the court of appeals' decision "could easily become a general license to reopen final judgments whenever Congress later revises the law." *Id.* at 20. That concern is misleading and overblown. To start, Rubicon fails to distinguish between retroactive and nonretroactive amendments, and the court of appeals discussed only retroactive amendments.

Because "the presumption against retroactive legislation is deeply rooted in [this Court's] jurisprudence," *Landgraf*, 511 U.S. at 265, the decision below is relevant to only a small sliver of cases. And that sliver is whittled down further because the court applied a six-factor test that also considers a plaintiff's diligence and delay, as well as reliance interests and comity. Pet. App. 41a (applying the factors enunciated in *Phelps v. Alameida*, 569 F.3d 1120, 1134–40 (9th Cir. 2009)). The test applied by the Ninth Circuit was well-established, and Rubicon has not challenged either the test or the court of appeal's application of it.

2. Focusing on *Plaut*, Rubicon argues that the court of appeals' decision runs counter to the separation of powers. Pet. 20–22. The decision, though, is wholly consistent with *Plaut*.

Plaut concerned an amendment to the Securities Exchange Act that had been enacted following the decision in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). *Lampf* had imposed a time bar for cases brought under the Act, and the amendment mandated that all cases that had been dismissed based on this time bar "shall be reinstated on motion by the plaintiff." *Plaut*, 514 U.S. at 215. In *Plaut*, the Court held that the separation of powers did not allow Congress to command courts to reopen final decisions. *See id.* at 240.

Importantly, *Plaut* expressly distinguished between an impermissible "legislative mandate to reopen" and courts' inherent power under Rule 60(b). *Id.* at 233–34. Unlike the statute at issue in *Plaut*, Rule 60(b) "merely reflects and confirms the courts' own inherent and discretionary power … to set aside a judgment whose enforcement would work inequity." *Id.* at 233–34. Accordingly, although Congress cannot command courts to reopen judgments, courts properly can take into consideration retroactive amendments when considering a Rule 60(b) motion.

At bottom, Rubicon's separation-of-powers argument again boils down to a misrepresentation of the court of appeals' decision. The court did not say that Congress required it to reopen a final judgment. Instead, the court considered Congress's retroactive clarifying amendment, alongside the applicable case-specific factors such as delay, reliance, and the relationship between the change in law and the challenged judgment. Pet. App. 40a–42a. Rubicon's disagreement with the outcome of the court's holistic analysis does not reflect an issue of constitutional dimension.

II. The question whether the court of appeals properly identified the bases for the district court's order does not warrant review.

A. Rubicon asserts that the decision below "splits with at least nine other circuits" because it improperly reviewed the "underlying judgment," and not just the Rule 60(b) decision. Pet. 23. This assertion relies on a misrepresentation of the decision below.

Rubicon begins with two unremarkable propositions of law: that an appellate court reviewing the denial of a Rule 60(b) motion ordinarily does not consider the underlying judgment; and that the denial of a Rule 60(b) motion is reviewed for an abuse of discretion. *See* Pet. 23–26. The Ninth Circuit did not depart from that consensus.

First, the Ninth Circuit agreed that it would "simply review the district court's reasons for denying Rule 60(b) relief," not the underlying judgment. Pet. App. 37a n.9. The district court, however, had incorporated its reasons for granting summary judgment "into the decision under review by relying on them to deny Plaintiffs' Rule 60(b) motion." *Id.* at 36a. Accordingly, the Ninth Circuit reviewed the underlying reasons that the district court's Rule 60(b) decision expressly incorporated.

The dissenting judges agreed that the reasoning in a previous order is reviewable "where a district court truly relied upon a previous order … to deny a party Rule 60(b) relief." *Id.* at 68a; *see also Krivak v. Home Depot U.S.A., Inc.*, 2 F.4th 601, 606 (7th Cir. 2021) ("The district court's denial of the Rule 60(b) motion effectively amounted to reinforcing and standing by its original dismissal decision. So by reviewing the district court's denial of the Rule 60(b) motion, we are, for all intents and purposes, reviewing the underlying dismissal order."). The dissenters merely disagreed as a factual matter as to whether that's what happened here.

Thus, the dispute in this case is not about the Rule 60(b) standard, but about whether the court of appeals correctly or incorrectly read the district court's Rule 60(b) decision to incorporate its earlier reasoning. That fact-specific question has no significance beyond this case and falls well short of this Court's standards for granting certiorari. *See* S. Ct. R. 10.

B. Rubicon also insists that the en banc court improperly reviewed de novo the district court's denial of the Rule 60(b) motion. *See* Pet. 27. In fact, the court of appeals followed the consensus view and "review[ed] for abuse of discretion the denial of [the] Rule 60(b) motion." Pet. App. 13a.

To be sure, the court of appeals reviewed de novo questions of law *underlying* the denial of the Rule 60(b) motion. That approach is a part of the ordinary review for an abuse of discretion. As the court of appeals explained, "[a] district court abuses its discretion if its denial rests on 'an erroneous view of the law.'" *Id.* (quoting *Phelps*, 569 F.3d at 1131). This Court has stated the same point: "A district court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996).

Likewise, every court of appeals has applied this same principle in the context of Rule 60(b) motions, explaining that a district court abuses its discretion when it commits a legal error in granting or denying such a motion. *See, e.g.*, *United States v. Kayser-Roth Corp.*, 272 F.3d 89, 100–01 (1st Cir. 2001); *Johnson v. Univ. of Rochester Med. Ctr.*, 642 F.3d 121, 125 (2d Cir. 2011); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 439 (3d Cir. 2021); *Allen v. Stein*, 165 F.4th 272, 286 (4th Cir. 2026), *pet. for cert. filed*, No. 26-114; *Adam Joseph Res. v. CNA Metals Ltd.*, 919 F.3d 856, 868 (5th Cir. 2019); *Jalapeno Prop. Mgmt., LLC v. Dukas*, 265 F.3d 506, 510 n.5 (6th Cir. 2001); *Ramirez v. United States*, 799 F.3d 845, 849 (7th Cir. 2015); *Raymond v. United States*, 933 F.3d 988, 991 (8th Cir. 2019); *Johnson v. Spencer*, 950 F.3d 680, 701 (10th Cir. 2020); *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 (11th Cir. 2008); *Marino v. DEA*, 685 F.3d 1076, 1080 (D.C. Cir. 2012); *Patton v. Sec'y of Dep't of Health & Hum. Servs.*, 25 F.3d 1021, 1029 (Fed. Cir. 1994); *see also* 12 James

Wm. Moore, et al., *Moore's Fed. Practice—Civil* § 60.68 (3d ed. 2026) ("The practical effect of a distinction between review for abuse of discretion and de novo review may be minimal or nonexistent, however. Under either formulation of the appropriate standard of review, the court of appeals reviews the substantive legal merits of the district court's decision and … does not defer to the judgment of the district court.").

Because the decision below is consistent with the other courts of appeals and this Court with respect to the second question presented, the petition should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

AGNIESZKA M. FRYSZMAN
Counsel of Record
NICHOLAS J. JACQUES
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW
East Tower, Ste. 500
Washington, DC 20005
(202) 408-4600
afryszman@cohenmilstein.com

PAUL L. HOFFMAN
SCHONBRUN SEPLOW HARRIS HOFFMAN & ZELDES LLP
200 Pier Ave., Ste. 226

BECCA STEINBERG
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

CATHERINE SWEESTER
UCLA LAW CLINICS
385 Charles E. Young Dr.
Los Angeles, CA 90095
(310) 267-5068

DAN STORMER
HADSELL STORMER RENICK & DAI LLP
128 N Fair Oaks Ave.,

Hermosa Beach, CA 90254
(310) 396-0731

Ste. 204
Pasadena, CA 91103
(424) 297-0114

Attorneys for Respondents

September 2026