No. 25-534

IN THE

Supreme Court of the United States

ANDREW HARRINGTON, KATIE LIAMMAYTRY, JASON LENCHERT, AND DYLAN BASCH,
Petitioners,

v.

CRACKER BARREL OLD COUNTRY STORE, INC.,
Respondent.

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Respondent Cracker Barrel Old Country Store concedes that there is a circuit split on the question whether a Fair Labor Standards Act (FLSA) collective action, brought in federal district court against an employer that has been properly served, may include members who were employed outside the state in which the district court sits. Resp. Br. 3. Cracker Barrel concedes that this split is consequential. *See id.* at 4. And Cracker Barrel acknowledges that parties on both sides of the split have asked this Court to resolve it. *See id.* at 8. Further, Cracker Barrel does not suggest that this case is a poor vehicle for resolving this important, recurring issue.

Instead, Cracker Barrel speculates that "[t]here is no reason to believe" that the circuit split "will not soon" work itself out. *Id.* at 1. Cracker Barrel offers no basis for this speculation, and it is belied by the sharply divided views of the judges who have considered the issue.

This Court should grant the petition, resolve the question presented, and reverse the decision below.

ARGUMENT

1. As Cracker Barrel concedes, Resp. Br. 3, the courts of appeals are divided on the question presented. The First Circuit has held that where a defendant employer has been properly served with the summons and complaint in an FLSA collective action pursuant to the procedural requirements of Federal Rule of Civil Procedure 4, injured employees may opt in to the collective action irrespective of whether they were employed inside the forum state. *Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84, 87 (1st Cir. 2022). In contrast, the Ninth Circuit in the decision

below joined the Third and Eighth Circuits, as well as divided panels of the Sixth and Seventh Circuits, in holding the opposite. Pet. App. 9a–14a; *see Vanegas v. Signet Builders, Inc.*, 113 F.4th 718, 727–28 (7th Cir. 2024); *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 387 (3d Cir. 2022); *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865–66 (8th Cir. 2021); *Canaday v. Anthem Cos.*, 9 F.4th 392, 399–400 (6th Cir. 2021).

Cracker Barrel downplays this conflict among the circuits by characterizing the First Circuit's holding on the question presented as a "minority-of-one view." Resp. Br. 3. This Court, however, frequently grants review to resolve a conflict where a single circuit stands alone on one side of the disagreement. *See, e.g.*, *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45, 49 (2025); *United States v. Clarke*, 573 U.S. 248, 253 (2014); *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 453–54 (1993). And this Court's review in such cases may well vindicate a circuit's "minority-of-one view." *See, e.g.*, *Coleman v. Tollefson*, 575 U.S. 532, 536–37 (2015) (unanimously affirming a Sixth Circuit holding that conflicted with holdings issued by "the vast majority of the other Courts of Appeals," including the First, Third, Fourth, Fifth, Eighth, Ninth, Tenth, and D.C. Circuits (citing *Henslee v. Keller*, 681 F.3d 538, 541 (4th Cir. 2012), for a list of the majority circuits)); *United States v. Wells*, 519 U.S. 482, 486 & n.3 (1997) (in an 8-1 opinion, adopting the view of the Second Circuit, whose opinion conflicted with holdings of the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits).

Cracker Barrel is also wrong that "momentum" against the First Circuit's holding in *Waters* makes it "reasonable to expect" that the First Circuit will "reconsider" its precedent. Resp. Br. 3 (citation

omitted). Several appellate judges have reached the same conclusion as *Waters* on the question presented. *See Vanegas v. Signet Builders, Inc.*, 125 F.4th 837, 838 (7th Cir. 2025) (Maldonado, J., joined by Jackson-Akiwumi, J., dissenting from denial of rehearing en banc); *Vanegas*, 113 F.4th at 731 (Rovner, J., dissenting); *Canaday*, 9 F.4th at 404 (Donald, J., dissenting). And in circuits that have not yet resolved the question, multiple district courts have expressly adopted *Waters*' reasoning. *See, e.g.*, *Dahl v. Petroplex Acidizing, Inc.*, 2024 WL 22087, at *12 (D.N.M. Jan. 2, 2024) (holding that an FLSA collective action may contain out-of-state opt-in members "for the reasons expressed in *Waters*"); *Stacy v. Jennmar Corp. of Va.*, 342 F.R.D. 215, 222 (W.D. Va. 2022) ("I agree with the approach taken in … *Waters*[.]"); *see also* Pet. 11–12 (citing additional district court decisions).

Cracker Barrel's observation that *other* district courts have disagreed with *Waters* and applied this Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255 (2017), to restrict personal jurisdiction in a collective action, Resp. Br. 8–9, only underscores the conflict among the lower courts on the question presented. *See, e.g.*, *Adams v. Absolute Consulting, Inc.*, 2023 WL 3138043, at *4 (W.D. Tex. Apr. 27, 2023) (observing that "[t]he application of *Bristol-Myers* to FLSA cases is far from settled law" and characterizing the issue as "a close question"), *report and recommendation adopted*, 2023 WL 3874326 (W.D. Tex. June 7, 2023). What is more, two of the district court decisions that Cracker Barrel cites, *see* Resp. Br. 8–9, hold the *opposite* of what Cracker Barrel says they do. *See Dahl*, 2024 WL 22087, at *12 (stating that "*Bristol-Myers* does not limit the Court's exercise of personal

jurisdiction over claims by … the putative collective"); *Aiuto v. Publix Super Markets, Inc.*, 2020 WL 2039946, at *5 (N.D. Ga. Apr. 9, 2020) (stating that *Bristol-Myers* "does not divest the Court of personal jurisdiction, regardless of where the opt-in plaintiffs may have suffered their alleged injuries").

Far from the "near-consensus" that Cracker Barrel posits, then, Resp. Br. 9, appellate and district judges alike have reached—and continue to reach—conflicting answers to the question presented.

2. Cracker Barrel concedes that the split of authority is sufficiently important to merit this Court's intervention. *See* Resp. Br. 4. Indeed, Cracker Barrel asks this Court to decide the case on the merits. *Id*. Although Cracker Barrel later retreats, asserting that the disagreement in the lower courts "has produced no demonstrable conflict in results," *id.* at 9, that assertion is manifestly incorrect. As Petitioners have explained, *see* Pet. 2, collective actions filed in district courts in the First Circuit may include members who were employed in any state, whereas collective actions filed in district courts in circuits that stand on the other side of the split may include only those members who were employed in the forum state. Unsurprisingly, this divergence translates directly into real-world effects. *Compare, e.g.*, *Coppola v. Amrock, LLC*, 2024 WL 1605994, at *7–8 (D. Mass. Apr. 12, 2024) (relying on circuit precedent to authorize inclusion of out-of-state employees in an FLSA collective action), *with, e.g.*, *Fogg v. Clean Harbors Env't Servs., Inc.*, 2023 WL 1794836, at *5–6 (D.N.J. Feb. 7, 2023) (relying on circuit precedent to limit membership in an FLSA collective action to in-state employees). Indeed, Cracker Barrel itself agrees that the courts' divergent rules have real effects. *See*

Resp. Br. 4 (contending that the disagreement among the circuits encourages "forum-shopping").

Further highlighting the significance of the question presented, Cracker Barrel concedes that the question has recurred multiple times over the past few years in petitions filed in this Court by employers and employees alike. *See id.* at 8. Cracker Barrel argues that because this Court has previously declined to review the question presented, it should do the same now. *Id.* The fact that the circuit split has become firmly entrenched as the issue continues to arise in district and appellate courts, however, is a reason to *grant* review. Moreover, since the Court last considered a petition raising the question presented here, the question has seen substantial additional analysis. *See, e.g.*, *Vanegas*, 125 F.4th at 838–44 (Maldonado, J., dissenting from denial of rehearing en banc); *Vanegas*, 113 F.4th at 723–31; *id.* at 731–38 (Rovner, J., dissenting). And this Court has since issued its decision in *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025), which bears meaningfully on the proper resolution of the question. *See infra* pp. 5–6; Pet. 15–18.

3. Cracker Barrel devotes much of its brief to defending the Ninth Circuit's holding on the merits of the question presented, Resp. Br. 9–12, but it largely fails to respond to the points made in the petition. *See generally* Pet. 15–25. The arguments that it does make are meritless.

According to Cracker Barrel, the "constitutional principle[s] of personal jurisdiction" articulated in *Bristol-Myers* limit the power of federal courts with respect to FLSA collective actions. Resp. Br. 10. But as Petitioners have explained, *see* Pet. 15–16, *Bristol-*

Myers addresses limits that the Fourteenth Amendment places on the power of *state* courts, whereas the power of the federal courts is constrained instead by the Fifth Amendment. And *Fuld* makes clear that "the Fifth Amendment does not impose the same jurisdictional limitations as the Fourteenth." 606 U.S. at 18. Cracker Barrel does not argue that a court of the United States taking jurisdiction over a United States corporation on claims arising in the United States under the laws of the United States would violate the Fifth Amendment's guarantee of due process. Any such argument would be wholly insupportable. *See id.* at 23 (explaining that a federal court's exercise of jurisdiction comports with the Fifth Amendment where such exercise is "tie[d] … to predicate conduct that … bears a meaningful relationship to the United States").

Although Cracker Barrel maintains that *Fuld* establishes that the Fifth Amendment rather than the Fourteenth "constrains federal courts" only "when Congress has created a nationwide service-of-process provision," Resp. Br. 11, the opinion suggests no such qualification. The Fourteenth Amendment's Due Process Clause, by its terms, applies only to "State[s]." U.S. Const. amend. XIV, § 1. Due process "limitations … upon the power of the Federal Government and the corollary authority of the federal courts," by contrast, reside in the Fifth Amendment. *Fuld*, 606 U.S. at 15. To be sure, Congress may elect to place further restrictions on the power of the federal courts—for example, by establishing required forms of service for invoking a court's jurisdiction—but such restrictions derive from a source other than the Fourteenth Amendment.

Cracker Barrel also errs in contending that Rule 4(k) restricts a federal court's power to hear an FLSA collective action that includes employees who were injured outside the forum state. Rule 4(k)(1)(A) provides that "[s]erving a summons … establishes personal jurisdiction over a defendant[] … who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Where, as here, a defendant is properly served with a complaint asserting an FLSA collective claim by a plaintiff who was employed within the forum state, the requirements of Rule 4(k)(1)(A) are satisfied and the court's personal jurisdiction over the defendant is established.

Cracker Barrel's arguments rest on an atextual understanding of Rule 4(k). According to Cracker Barrel, when a defendant "is not subject to general jurisdiction in the forum" state, Rule 4(k) requires that "each opt-in plaintiff must independently show that their claim 'arises out of or relate[s] to' the defendant's forum contacts." Resp. Br. 10 (alteration in original; quoting *Bristol-Myers*, 582 U.S. at 262). Rule 4(k), however, says nothing about developments after service of process, such as managing the opt-in process in an FLSA collective action. *See Waters*, 23 F.4th at 94 (observing that Rule 4 does not "constrain[] a federal court's power to act once a summons has been properly served, and personal jurisdiction has been established"). And opt-in employees are not required to effect service of process at all, making Rule 4(k) inapposite to them.

In arguing that a federal court lacks jurisdiction over an FLSA collective claim unless "each opt-in plaintiff … independently" shows that the district court would have had jurisdiction over the defendant

with respect to the opt-in plaintiff's individual claim in an individual action, Resp. Br. 10, Cracker Barrel erroneously "treat[s] an FLSA collective action as a body of consolidated individual actions, each one of which must separately comply with Rule 4." Pet. 23. Cracker Barrel makes no response to Petitioners' explanation why this understanding of an FLSA collective action is incorrect. *See id.* at 22–24.

Indeed, consistent with Congress's enactment of the FLSA's collective-action provision to promote the "efficient resolution in one proceeding of common issues of law and fact arising from the same alleged [unlawful] activity," *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989), courts for decades uniformly authorized opt-in members to join a properly filed collective action, irrespective of where the opt-in members were employed. Cracker Barrel's contention that this consensus view allowed "policy [to] override statutory text," Resp. Br. 11, is baseless. Notably, Cracker Barrel identifies nothing in the text of the FLSA or Rule 4(k) that limits a federal court's jurisdiction over a collective action in the manner that Cracker Barrel contends.

The view that universally prevailed for nearly eighty years—and that prevails today in the First Circuit and numerous district courts—sensibly implements the FLSA in a way that is consistent with constitutional principles and statutory text. This Court should grant review and confirm that the Fourteenth Amendment principles that *Bristol-Myers* recognizes as limiting state courts do not limit a federal court's power to hear an FLSA collective action against a properly served defendant.

CONCLUSION

This Court should grant the petition for a writ of certiorari and reverse the decision below.

Respectfully submitted,

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