In the Supreme Court of the United States

UBER TECHNOLOGIES, INC., *et al.*,
Petitioners,
v.
PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Respondents.

LYFT, INC.,
Petitioner,
v.
PEOPLE OF THE STATE OF CALIFORNIA, *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
FIRST APPELLATE DISTRICT, DIVISION FOUR

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Like other States, California distinguishes between employees and independent contractors, imposing certain legal obligations on those who hire employees. Petitioners are two app-based transportation services that hired tens of thousands of drivers, throughout California, without adhering to the legal requirements for employees. That conduct prompted three government enforcement lawsuits. In the first, respondent the People of the State of California, represented by the State's Attorney General and three City Attorneys, sued petitioners under the state Unfair Competition Law. The People seek injunctive relief, the payment of civil penalties to government recipients, and restitution. In the two other cases, the California Labor Commissioner sued each petitioner, seeking injunctive relief and civil penalties payable to the State, as well as certain penalties, damages, and payments owed to drivers under the state Labor Code. The officials bringing these actions sued as government enforcers, and their lawsuits are neither on behalf of any driver nor subject to any driver's control. Petitioners unsuccessfully moved to compel that all remedies that might potentially be payable to workers be withheld from adjudication—and instead decided in thousands of driver-by-driver arbitrations—based on petitioners' arbitration agreements with some (but not all) of their drivers. The question presented is:

Whether the existence of arbitration agreements between petitioners and some of their drivers means that the government officials in these cases are preempted, under the Federal Arbitration Act, from seeking any remedies that might result in payments to the workers.

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STATEMENT

1. The petitions in Nos. 23-1130 and 23-1132 arise from three state court cases. Petitioners are the defendants in those cases: Uber Technologies, Inc. (and associated entities), and Lyft, Inc. They paid tens of thousands of drivers "across the State" to provide transportation for petitioners' customers. *Lyft* Pet. App. 99a. The complaints in each case alleged that those drivers, who were classified as "independent contractors" by petitioners, were actually employees under governing law. *See, e.g., id.* at 50-51a, 88a. The drivers' legal status as employees subjected petitioners to certain legal requirements. Some of those requirements concerned petitioners' obligations toward the drivers themselves—such as requirements to pay minimum wages; provide meal breaks, rest periods, sick leave, and other health benefits; and reimburse drivers for business expenses. *See, e.g., id.* at 112a-115a. Others concerned obligations toward the State and its political subdivisions, such as requirements to contribute to the State's unemployment insurance, disability insurance, family leave, and workers' compensation programs, as well as to municipal programs. *See, e.g., id.* at 116a.

a. In the first case, *People of the State of California v. Uber Technologies, Inc., et al.*, California's Attorney General and the City Attorneys of Los Angeles, San Diego, and San Francisco filed suit in May 2020 on behalf of the People. 1 AJA 56.[1] The operative complaint alleges that petitioners "gain[ed] an unlawful competitive advantage over their competitors" by "circumventing the protections and benefits that the law

[1] AJA refers to the Appellants' Joint Appendix in the court of appeal.

requires employers to provide to their employees" with respect to wages, expense reimbursement, meal and rest periods, sick leave, and health benefits. *Lyft* Pet. App. 112a-115a. That misconduct also deprived the state and local governments of revenue they were entitled to under relevant laws, *id.* at 116a, and placed "law-abiding competitors" at "a substantial competitive disadvantage," *id.* at 117a.

The People's principal claim is that petitioners' misclassification of their drivers was an "unlawful, unfair or fraudulent" business act or practice in violation of California's Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 *et seq.* Pet. App. 118a. The UCL, which dates back in some form to 1872, took its modern shape decades ago. *See* 1933 Cal. Stats. ch. 953, § 1. As relevant here, it provides a cause of action when a violation of law occurs as part of a "business practice." *See Farmers Ins. Exch. v. Superior Ct.*, 2 Cal. 4th 377, 383 (1992). A primary purpose is "'the preservation of fair business competition.'" *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (1999). The UCL targets the "unfair advantages in the marketplace" that would otherwise allow law-breakers to flourish, "to the detriment of both consumers and law-abiding competitors." *Rose v. Bank of Am., N.A.*, 57 Cal. 4th 390, 397 (2013).

Although the UCL provides for both public and private enforcement, authority to bring a public action such as this one rests exclusively with designated public officials: the State's Attorney General, district attorneys, and certain county counsels and city attorneys. Cal. Bus. & Prof. Code § 17204. UCL actions brought by those officials in the name of the People differ from those brought by private parties. For one thing, they are exempt from the standing and

class-action requirements that apply to private, "representative" litigants. Cal. Bus. & Prof. Code § 17203; Cal. Civ. Proc. Code § 332. The available remedies are also different: Any qualifying plaintiff may obtain an injunction or an order to "restore to [a] person in interest any money or property, real or personal, which may have been acquired by means of [the] unfair competition." Cal. Bus. & Prof. Code § 17203. But when the People prove a UCL violation, they are also entitled to mandatory civil penalties, which are distributed to the treasuries of designated public agencies to support future civil law enforcement efforts. *Id.* §§ 17206, 17206.1, 17206.2.

The People's complaint here seeks those civil penalties, as well as a permanent injunction barring the companies' illegal practices throughout the State. *Lyft* Pet. App. 122a-123a.[2] It also seeks such "judgments as may be necessary to restore to any person in interest any money or property that may have been acquired" through violations of the UCL. *Id.* at 122a; *see* Cal. Bus. & Prof. Code § 17203.

b. The second and third cases are *Garcia-Brower v. Lyft, Inc., et al.*, and *Garcia-Brower v. Uber Technologies, Inc., et al.*, each of which was filed in August 2020 by the California Labor Commissioner. *See* 2 AJA 564, 599. The Labor Commissioner is appointed by the

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[2] In November 2020, California voters enacted Proposition 22. That statute allows Uber, Lyft, and similar companies to classify their drivers as independent contractors if certain conditions are met. The California Supreme Court is currently considering a challenge to Proposition 22 under the state Constitution. *See Castellanos v. California*, No. S279622 (argued May 21, 2024). The operative complaint, which was filed in 2022, seeks injunctive relief only in the event that Proposition 22 is invalidated. *Lyft* Pet. App. 121a-122a.

Governor and serves as the Chief of the Division of Labor Standards Enforcement at the Department of Industrial Relations. Cal. Labor Code §§ 21, 79. Both complaints allege violations and seek remedies under the California Labor Code. The policy underlying that Code is "to vigorously enforce minimum labor standards"—not only to protect workers but also "to protect employers who comply with the law from those who attempt to gain a competitive advantage . . . by failing to comply with" state labor standards. *Id.* § 90.5(a).

The operative complaints seek injunctive relief against future violations. *Lyft* Pet. App. 83a; 2 AJA 591. Beyond that, the relief sought depends on the particular statutory violation alleged. For some claims, such as the alleged violation of Labor Code § 226.8 (which prohibits misclassifying employees), the complaints seek only civil penalties payable to the State. *See, e.g., Lyft* Pet. App. 61a, 84a-85a; 4 AJA 1166, 1183-1184. For some other claims, the complaints seek a combination of penalties payable to the State and penalties, liquidated damages, and other money that is payable under various statutes to petitioners' drivers. *See Lyft* Pet. 84a; 4 AJA 1182-1183.

2. Although the People and the Labor Commissioner filed their lawsuits in different trial courts, the cases were coordinated for pretrial proceedings before a single trial judge to whom other lawsuits about petitioners' misclassification of drivers have also been referred. *See Lyft* Pet. App. 4a.

a. Uber and Lyft filed motions to compel arbitration in all three actions. *Lyft* Pet. App. 4a. They argued that the Federal Arbitration Act (FAA) requires individual arbitrations as to any remedies sought by the complaints that would be payable to individual

drivers, whether under the UCL or under various provisions of the Labor Code. 1 AJA 96, 106-108; 2 AJA 352, 365; 3 AJA 741; 5 AJA 1307. They asked the trial court to stay all three cases until those arbitrations concerning any drivers' entitlement to individual remedies had been resolved. *See* 2 AJA 352-353; *see also* 2 AJA 366 n.7, 485. But petitioners were not clear as to specifics—including how many arbitrations there would be, when those arbitrations would occur, and whether the arbitrations should be initiated by the People and the Labor Commissioner or could only proceed if initiated by the drivers. *See infra* p. 23. In the alternative, if a stay were not granted, the motions urged the trial court to "strike" the complaints' requests for remedies payable to drivers. *See* 1 AJA 87; 2 AJA 352; 3 AJA 741; 5 AJA 1300.

Petitioners did not identify any arbitration agreement between them and the State, the Attorney General, the City Attorneys, or the Labor Commissioner. Petitioners relied instead on arbitration agreements that they had entered into with some proportion of the drivers whom they allegedly misclassified. *Lyft* Pet. App. 4a. But petitioners did not specify how many of those drivers signed arbitration agreements or who they were. *See* 2 AJA 370 (Uber's representation that "some" drivers opted out of arbitration provisions, but a "majority" did not); 1 AJA 97 n.6 (Lyft's representation that the "vast majority" did not opt out).

b. The trial court denied petitioners' motions. *Lyft* Pet. App. 30a-43a. The court noted that "neither the People nor the Commissioner is a party to any of the arbitration agreements with Defendants' drivers." *Id.* at 32a. Nor were the drivers the source of those officials' right to enforce state law: Under California law,

"the People and the Commissioner act as public prosecutors when they pursue litigation to enforce the UCL and Labor Code," with each empowered "to vindicate the public interest" by seeking civil penalties, injunctive relief, and other remedies "independent" of private parties. *Id.* As a result, the court reasoned, the People and Labor Commissioner were not "bound by Defendants' private arbitration agreements." *Id.* at 32a-33a. The court found support for that conclusion in *EEOC v. Waffle House, Inc.* 534 U.S. 279 (2002), *see Lyft* Pet. App. 33a, 35a, and in state court precedent holding that "'the primary interest of law enforcement actions under the UCL is protecting the public, not private interests,'" *id.* at 36a; *see also id.* at 39a (authority for Labor Commissioner to sue to enforce Labor Code is to "further[] the public interest[]"). The court stayed its decision pending petitioners' appeal.

3. The court of appeal affirmed. *Lyft* Pet. App. 1a-29a. It emphasized that the FAA's "strong federal policy in favor of enforcing parties' agreements to arbitrate" is premised "on the parties' consent." *Id.* at 7a. In contrast, the FAA does not reflect any "policy in favor of requiring arbitration of disputes the parties have not agreed to arbitrate." *Id.* While third parties can sometimes be bound by arbitration agreements they did not sign based on theories such as "agency," "estoppel," "veil-piercing," or "alter ego," none of those was present here. *Id.* (internal quotation marks omitted). In particular, there was no support for petitioners' assertion that the Labor Commissioner and the public officers who brought the People's case were mere "proxies" for the drivers: Under California law, those public officers did "not derive their authority from individual drivers but from their independent statutory authority to bring civil enforcement actions." *Id.* at 8a. Indeed, *Waffle House* had rejected a similar

argument that the federal Equal Employment Opportunity Commission (EEOC) served as a mere "'proxy for the employee'" when bringing enforcement actions. *Id.* at 9a (quoting *Waffle House*, 534 U.S. at 297-298).

The court of appeal also rejected petitioners' reliance on this Court's statement in *Viking River Cruises, Inc. v. Moriana* that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of" the Act. *Lyft* Pet. App. 12a (quoting 596 U.S. 639, 652 n.4 (2022)). That statement, the court of appeal reasoned, recognized that "when an employee who has agreed to arbitrate claims against an employer brings a[n] . . . action," then "the employee [must] submit to arbitration any claim covered by the agreement" regardless of whether the employee's claim "could be said to be a dispute between [the] employer and the state." *Id.* It addressed claims (on behalf of anyone) that are "brought by a plaintiff who was a signatory to an arbitration agreement"—not claims brought by "public enforcement agencies who did not agree to arbitrate." *Id.* at 12a-13a.

In a portion of the opinion that petitioners do not challenge here, the court of appeal also rejected their claims that arbitration was required under the doctrine of equitable estoppel, *Lyft* Pet. App. 21a-28a, and concluded that there was no basis to stay the underlying actions during driver arbitrations, *id.* at 28a. Finally, the court noted that Uber had abandoned on appeal its challenge to the trial court's refusal to strike the restitution demand in the alternative, and held that Lyft's "brief[]" argument for striking the People's restitution demand lacked merit. *Id.* at 29a & n.15.

The California Supreme Court denied the companies' petitions for review. *Lyft* Pet. App. 44a.

ARGUMENT

The decision below reflects a commonly understood and unremarkable proposition: a State's designated law enforcement officials may file suit to remedy violations of state laws regardless of whether private parties have agreed to settle disputes among themselves by arbitration. There is no conflict of authority regarding that proposition, and the decision below is consistent with this Court's precedents. Petitioners attempt to show otherwise, but their arguments elide the substantial differences between a case such as this one—where the government sues to enforce its laws—and cases where the government takes over the operations of a private entity and seeks to enforce that entity's contractually created rights while selectively evading an arbitration provision in the same contract. And petitioners' attempt to elevate the importance of this case rests on hypothetical scenarios that are not presented here.

1. Petitioners allege that "lower courts remain deeply divided," as to the question in this case. *Uber* Pet. 13; *see Lyft* Pet. 10 (alleging a "[s]tark [c]onflict"). That is incorrect.

a. Uber acknowledges that this question "rarely arises in federal court." *Uber* Pet. 31. And both petitioners concede that the decision below is consistent with every state court decision to address a similar issue. *See Lyft* Pet. 11, 16; *Uber* Pet. 11-12.

For instance, in *NC Financial Solutions of Utah, LLC v. Commonwealth ex rel. Herring*, 299 Va. 452 (2021), *cert. denied*, 142 S. Ct. 582 (2021) (No. 21-111) (Dec. 6, 2021), Virginia's Attorney General sued a lender for offering Virginians loan terms that violated Virginia law. The complaint sought injunctive relief, civil penalties, and restitution of the money "that [the

lender] acquired through its unlawful conduct." *Id.* at 456. Invoking arbitration agreements between the lender and its customers, the lender sought to block the Commonwealth's demand for restitution. *Id.* at 457. But the Virginia Supreme Court reasoned that "'[a]rbitration under the [FAA] is a matter of consent, not coercion'": while "'[t]he FAA directs courts to place arbitration agreements on equal footing with other contracts, . . . it "does not require parties to arbitrate when they have not agreed to do so."'" *Id.* at 459-460. Virginia thus was "not bound by the arbitration agreements at issue." *Id.* at 461. And the FAA did not preclude Virginia authorities from "seeking 'victim-specific' relief"—"including restitution for individual consumers"—along with other remedies. *Id.*

Similarly, in *State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562 (Minn. Ct. App. 2005), Minnesota sued a bank for violating state law. The State's complaint sought civil penalties, declaratory and injunctive relief, and restitution. *Id.* at 566. The bank claimed that the State was subject to the arbitration agreements between the bank and its customers, arguing that "the facts underlying the state's claim are the same facts that would permit private relief" and alleging that the State had effectively "stepped into the shoes of" customers, "seeking to protect only [their] private interests." *Id.* at 569. But the court rejected that argument: "[j]ust as the state does not step into the shoes of victims of crime when it acts in its prosecutorial role," the State likewise was acting as an "independent party" rather than "step[ping] into the shoes of individual [customers]" when it pursued its civil action to enforce state law. *Id.* at 570.

As petitioners acknowledge, the lower court's reasoning here aligns with these Virginia and Minnesota

decisions. *Lyft* Pet. 11; *Uber* Pet. 12. And decisions by the high courts of Iowa, New York, and Ohio are "of a piece." *Lyft* Pet. 11, 13; *see Rent-A-Ctr., Inc. v. Iowa Civ. Rts. Comm'n*, 843 N.W.2d 727 (Iowa 2014); *Taylor v. Ernst & Young, L.L.P.*, 958 N.E.2d 1203 (Ohio 2011); *People ex rel. Cuomo v. Coventry First LLC*, 13 N.Y.3d 108 (2009).

b. Despite petitioners' best efforts to manufacture a conflict with federal precedent, federal decisions do not diverge from that state-court consensus.

As Lyft acknowledges in a footnote, the Fifth Circuit and four district courts have reached the same conclusion as the decision below. *See Lyft* Pet. 19 n.6 (citing *Iberia Credit Bureau v. Cingular Wireless*, 379 F.3d 159, 175 (5th Cir. 2004); *Charter Commc'ns, Inc. v. Derfert*, 510 F. Supp. 3d 8, 14-21 (W.D.N.Y. 2021); *Charter Commc'ns, Inc. v. Jewett*, 573 F. Supp. 3d 742, 748-757 (N.D.N.Y. 2021); *Keane v. ALPS Fund Servs., Inc.*, 2020 WL 7321055, at *5 (D. Mass.); *SBM Site Servs., LLC v. Alvarez*, 2018 WL 735388, at *1-5 (D. Neb.), report and recommendation adopted, 2018 WL 734170 (D. Neb.)). The First Circuit has also endorsed that position. *See Labor Rel. Div. of Constr. Indus. v. Healey*, 844 F.3d 318, 329 n.6 (1st Cir. 2016).

Petitioners assert that a handful of other federal cases conflict with the decision below. But that assertion does not withstand closer inspection. Petitioners primarily invoke *Olde Discount Corp. v. Tupman*, 1 F.3d 202 (3d Cir. 1993). *See Lyft* Pet. 17-18; *Uber* Pet. 14-15. That case arose when a married couple complained to a Delaware state agency about their stockbroker. *Olde Discount*, 1 F.3d at 204. At the couple's request, the agency began an administrative adjudication concerned entirely with the stockbroker's treatment of the couple. *See id.* at 205 (agency "did not

suggest that [the broker] had violated any duty to customers other than the" couple, and "proposed individual relief for [that couple] only"). The brokerage sued the couple and the agency officials in federal court. *Id.* Over a dissent, two judges on the Third Circuit panel voted to affirm an injunction against the agency adjudication, but for different reasons. *Id.* at 203-204.

As petitioners concede, only one judge (Judge Greenberg) viewed the state agency's action as preempted by the FAA. *Uber* Pet. 14; *Lyft* Pet. 17-18. The other (Judge Rosenn) voted to affirm the district court injunction "by way of contract law" instead. *Olde Discount*, 1 F.3d at 215 (Rosenn, J., concurring). He viewed the *couple* as "attempt[ing] an 'end run' around the terms of the arbitration agreement by seeking relief in a state administrative proceeding," and he concluded that the district court's injunction properly "restrain[ed] *them*" from proceeding. *Id.* (emphasis added).

It is not at all clear that the *Olde Discount* majority would have held that the enforcement actions here must be arbitrated. Judge Rosenn's rationale would not apply, because the government plaintiffs here are not acting at the behest of some individual driver trying to evade a contract. And Judge Greenberg's opinion would not apply, because the complaints against Uber and Lyft seek to address and remedy statewide misconduct. *See Olde Discount*, 1 F.3d at 210 n.5, (Greenberg, J.) (calling it "conceivable that in the case of widespread violations of uniform character," individualized relief "might be possible notwithstanding the presence of arbitration agreements," and "stat[ing] no opinion on that possibility as it is not before us"); *supra* p. 1.

The two Ninth Circuit cases highlighted by petitioners are also inapposite. *See Uber* Pet. 15-16; *Lyft* Pet. 18-19. Both concerned insurance commissioners who were liquidators for insolvent insurance companies, enforcing those companies' contractual rights. In *Bennett v. Liberty Nat'l Fire Ins. Co.*, 968 F.2d 969, 970 (9th Cir. 1992), after the Montana insurance commissioner sued a liquidating company's reinsurer for coverage under a contract, the reinsurer argued that the suit was subject to that contract's arbitration provision. The court of appeals agreed, reasoning that "because the liquidator, who stands in the shoes of" the insolvent insurer, "is attempting to enforce [the insurance company's] contractual rights, she is bound by [the company's] pre-insolvency agreements." *Id.* at 972; *see id.* at 972 n.4. In *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1374-1375 (9th Cir. 1997), California's insurance commissioner sued a reinsurer for an insolvent insurance group based on "a number of reinsurance agreements." The insurance commissioner was acting as "the court-appointed liquidator and trustee" for the group. *Id.* at 1375. The court applied its recent *Bennett* decision and applied the arbitration provisions in the reinsurance agreements that he sought to enforce. *Id.* at 1380-1381.

As those cases recognize, someone who assumes the assets and liabilities of an insolvent entity and sues under that entity's contracts to collect the entity's debts will be bound by the arbitration clauses in those contracts. *Cf. Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1153 (3d Cir. 1989) (bankruptcy trustee "stands in the shoes of the debtor for the purposes of the arbitration clause"). But that principle is not relevant to a case like this one: The government officials here have not sued to enforce the contracts of any party to an arbitration agreement,

let alone taken over the management of such a party. They are instead suing as sovereigns with the goal of ensuring that state law is not violated. *See infra* p. 17.

Nor is any conflict created by Lyft's final two cases—neither of which concerned arbitration. *See* Lyft Pet. 19. In *California v. IntelliGender, LLC*, 771 F.3d 1169 (9th Cir. 2014), the court held that, under the preclusion principles that govern federal court judgments, a district court's decree settling a private suit under the Class Action Fairness Act was res judicata as to a government enforcer's later attempt to obtain additional money for members of the class. *Id.* at 1179-1182. The decision has no relevance here, where petitioners are not seeking to enforce any particular judgment. In *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914, 920-921 (9th Cir. 2003), the U.S. Secretary of Labor sued an employer to recover wages for an employee who had already lost her own suit for the same wages. The court ruled that there was privity, for res judicata purposes, because the employee's loss "came before" the government action, *id.* at 922-923, and because the Secretary sought only to recoup that employee's "individual economic loss, not to vindicate broader governmental interests by, for example, seeking an injunction," *id.* at 923. Neither situation is present here.

Petitioners are not the first litigant to assert that there is a "deep[]," "established," and "entrenched division among federal courts of appeals and state appellate courts over the question presented." Pet. for a Writ of Certiorari at 2, 21, 25, *NC Fin. Sols. of Utah, LLC v. Virginia*, No. 21-111 (July 23, 2021). That petition invoked much the same authority relied on by Lyft and Uber here. This Court denied it without relisting and without any noted dissent. *See* 142 S. Ct.

582 (2021). There was no conflict then, and there is no conflict now.

2. The reason no court has adopted petitioners' view of the merits is that it is wrong.

a. The "'first principle that underscores all of [this Court's] arbitration decisions'" is that "'[a]rbitration is strictly a matter of consent.'" *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019). Consent is "essential" because "arbitrators wield only the authority they are given." *Id.* "[T]hey derive their 'powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution.'" *Id.* A State cannot be forced to arbitrate its law enforcement actions based on agreements signed by individuals who did not enter those agreements on behalf of the State or its officials—and who would not have had authority to do so.

Petitioners argue that forcing the State to arbitrate is necessary to support the "'liberal federal policy favoring arbitration.'" *Uber* Pet. 5 (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *see Lyft* Pet. 3-4 (similar). As this Court recently explained, however, "the FAA's 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022). The policy "make[s] 'arbitration agreements as enforceable as other contracts, but not more so.'" *Id.* Petitioners' attempt to bind these government enforcers under petitioners' private agreements relies on the sort of "special, arbitration-preferring" rule that *Morgan* prohibits. 596 U.S. at 418.

b. Petitioners contend that this Court must correct state courts' "grave misreading" of *EEOC v. Waffle*

House, 534 U.S. 279 (2002), which they say addressed only federal enforcement efforts. *Lyft* Pet. 14; *see also Uber* Pet. 21. But the inability of such agreements to bind nonsignatory States would be clear from foundational principles even without the particular holding in *Waffle House*. *See supra* p. 14. To the extent *Waffle House* adds to the analysis, it squarely supports the decision below.

Waffle House concerned allegations that an employer discriminated against a disabled employee. 534 U.S. at 283. The employee complained to the EEOC, the EEOC sued the employer, and the employer moved to compel arbitration based on its agreement with the employee. *Id.* at 283-284. This Court rejected the employer's argument that the arbitration agreement barred the EEOC from seeking "victim-specific" relief as part of its case. *Id.* at 282, 284.

The Court observed that "nothing in the [FAA] authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement." *Waffle House*, 534 U.S. at 289. The FAA also "does not purport to place any restriction on a nonparty's choice of a judicial forum," and it "does not mention enforcement by public agencies." *Id.* Nor was it accurate to view the EEOC as a mere stand-in for the worker, given that the employee's consent was not necessary for "the EEOC [to] prosecute its claim," and the EEOC's "prayer for relief" could not "be dictated by" the employee. *Id.* at 291. The possibility that ordinary principles of res judicata, mootness, or mitigation might eventually apply to the litigation did not turn the EEOC into a mere "proxy" for the employee. *Id.* at 298.

Petitioners argue that *Waffle House* applies only to federal enforcers of federal law. *Lyft* Pet. 14-15; *Uber*

Pet. 23-24. They emphasize that Congress, "[w]henever it so pleases, . . . can abrogate any statute," and argue that it must have done so with respect to the FAA by passing the Americans with Disabilities Act. *Uber* Pet. 24. But *Waffle House* did not rest on notions of abrogation or implied repeal. To the contrary, this Court rejected the court of appeals' theory that there were differences to reconcile between the FAA and later civil rights law. *Waffle House*, 534 U.S. at 293-294. The Court reached its decision based on Congress's intent—expressed in the FAA itself—to limit that statute to the enforcement of *consensual* decisions to arbitrate. *Id.* at 294, 289.[3] The same intent likewise determines the outcome to petitioners' preemption challenge here. *See Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 324 (2016) ("'[P]re-emption claims turn on Congress's intent.'").[4]

Uber argues that *Waffle House* is distinguishable because the statute under which the EEOC sued gave the agency "'exclusive jurisdiction over the claim for

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[3] The Court addressed Title VII not to suggest that it superseded the FAA, but to respond to the employer's argument that even if the FAA did not preclude the EEOC's suit, Title VII did. *Compare, e.g., Waffle House*, 534 U.S. at 292, *with id.* at 301-308 (Thomas, J., dissenting) (noting that Title VII allows EEOC to receive only awards of "appropriate" relief, and arguing that requirement does not allow EEOC to seek relief employees could not sue for themselves).

[4] If the difference between state and federal agencies were relevant, the distinction would presumably run in the States' favor, since courts should not conclude that Congress intended States to be subject to suits they did not agree to—even in court—absent "'a clear legislative statement.'" *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55 (1996); *cf. Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 257 (2017) (Thomas, J., dissenting) (expressing view that FAA does not apply in state courts).

180 days,'" and the employee could not sue without the agency's permission. *Uber* Pet. 25. The Court cited those factors as refuting the employer's claim that the EEOC served as a mere proxy of the employee. 534 U.S. at 291, 288. Here, the status of the People and the Labor Commissioner as independent enforcers—not mere proxies—is equally apparent. California law grants the Labor Commissioner, as head of the Division of Labor Standards Enforcement, the power to bring these enforcement actions—regardless of any driver's consent and not subject to any driver's control. Cal. Lab. Code § 1193.6 (Labor Commissioner's power to bring wage claims "with or without" worker's consent); *Painting & Drywall Work Pres. Fund, Inc., v. Aubry*, 206 Cal. App. 3d 682, 687 (1988) ("The statute creates no duty, express or implied, which requires [the] Division to investigate or take action on every complaint which is filed with the Division.").

The law that governs public officials in civil enforcement matters such as the UCL is similar. *Cf. Boyne v. Ryan*, 100 Cal. 265, 267 (1893) (district attorney cannot be forced to bring civil suit). Indeed, California law provides that because the UCL focuses on a defendant's unfair or unlawful acts, a court may award restitution to individuals to remedy violations of the law without individualized proof of harm. *People v. Aguayo*, 11 Cal. App. 5th 1150, 1169 (2017). Just as in *Waffle House*, the government plaintiffs here do not need the "consent" of any individual driver to "prosecute [the] claim[s]," and no driver can "dictate[]" the prayer for relief or the course of the litigation. 534 U.S. at 291. Nor have the government plaintiffs allowed any private person to direct the filing and conduct of this case. The People and the Labor Commissioner are "the master[s] of [their] own case," with "authority to evaluate the strength of the public

interest at stake" regardless of any individual's differing view. *Id.*

That makes sense because the government pursues restitution for a public purpose: deterrence. "Future compliance may be more definitely assured if one is compelled to restore one's illegal gains," *Porter v. Warner Holding Co.*, 328 U.S. 395, 400 (1946), and restitution has "a more precise deterrent effect than a traditional fine," *Kelly v. Robinson*, 479 U.S. 36, 49 n.10 (1986). In *Kelly*, the fact that a "victim ha[d] no control over the amount of restitution awarded or over the decision to award restitution" led this Court to recognize that such awards operated "'for the benefit of' the State," rather than merely "'for . . . compensation' of the victim." *Id.* at 52-53.

The remedies sought here are no different. *See, e.g., Bank of the W. v. Superior Ct.*, 2 Cal. 4th 1254, 1267 (1992) (restitution under UCL serves to "'deter future violations'"); *Martinez v. Combs*, 49 Cal. 4th 35, 48 n.8 (2010) (liquidated damages under Labor Code § 1194.2 function as penalty). When public officials exercise their discretion to pursue those public purposes independent of the wishes or interests of any individual, *see supra* p. 17, they act in a capacity that is markedly different from a "successor in interest, assignee, insurer, guardian, or counsel," *Uber* Pet. 21.[5]

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[5] Lyft (Pet. 23) seizes on a statement in *Rebolledo v. Tilly's, Inc.*, 228 Cal. App. 4th 900, 914 (2014), about the Labor Commissioner serving as "trustee" of unpaid wages she collects. That statement refers to the Labor Commissioner's "affirmative duty to make a diligent search to locate any worker for whom unpaid wages or benefits have been collected." *Id.* It does not imply that the worker at any point owns the Labor Commissioner's claim or exercises control over it. *See supra* p. 17.

Finally, petitioners argue that the remedies sought by respondents are some "new device[] and formula[]" devised by the State to defeat arbitration. *Lyft* Pet. 20, 29 (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018)); *Uber* Pet. 7, 27. That argument is utterly without basis. The types of remedies at issue are longstanding features of federal law. *See, e.g., Porter,* 328 U.S. at 400 (restitution award for violating wartime economic legislation); 15 U.S.C. § 45(a)(4)(B) (restitution under Federal Trade Commission Act); 18 U.S.C. §§ 3663, 3663A (restitution in prosecutions for federal crimes); *Waffle House*, 534 U.S. at 286 (EEOC's authority to seek backpay). And they have existed in California for decades. *See, e.g., Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1147 (2003) (amendments in 1976 codified what was previously recognized as inherent equitable power to order restitution under UCL); *Moore v. Indian Spring Channel Gold Mining Co.*, 37 Cal. App. 370, 373 (1918) (discussing penalties payable to employees for nonpayment of wages).

c. None of the other decisions of this Court invoked by petitioners support their merits theory. Petitioners note the Court's observation in *Viking River* that "nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of" the FAA. *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 652 n.4 (2022); *see, e.g., Lyft* Pet. 16. But respondents do not claim a "categorical exemption." Government officials are subject to arbitration requirements if they or their agents have agreed to arbitration. Like other parties, they may also be required to arbitrate when they are a third-party beneficiary or assignee, or when they assume the assets of an entity and seek to enforce a contract agreed to by that entity that contains an

arbitration clause. *See supra* pp. 6, 12. But government officials are not subject to arbitration they did not agree to simply because they seek to penalize and deter state-law violations that private parties have agreed to arbitrate. As *Viking River* emphasized time and again, arbitration is "a matter of consent." 596 U.S. at 651, 659, 660.

Uber cites two other Supreme Court decisions for the proposition that "an arbitration agreement can bind a nonsignatory that seeks relief arising from the contract containing the arbitration agreement." *Uber* Pet. 22 (citing *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USSA, LLC*, 590 U.S. 432 (2020), and *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009)). Those decisions recognized that, under general principles of contract law like equitable estoppel, a nonsignatory seeking to enforce obligations of other provisions in a contract may be bound by the arbitration provision in the same contract. *See GE Energy Power*, 590 U.S. at 438; *Arthur Andersen*, 556 U.S. at 630-632. But petitioners do not identify any "'traditional principle[]' of state law," *Arthur Anderson*, 556 U.S. at 630, that would bind respondents in that way here. (At earlier stages of this case, they argued that equitable estoppel applied. But after the court of appeal rejected that argument, *see Lyft* Pet. App. 21a-28a, petitioners chose not to challenge that determination in their petitions for review at the California Supreme Court, and they have not raised that issue here. *See infra* p. 23.)[6]

[6] Nor are respondents seeking to enforce petitioners' obligations under their contracts with drivers; respondents are enforcing state laws that the contracts violated.

Finally, the Court's decision in *Preston v. Ferrer*, 552 U.S. 346 (2008), does not support petitioners' merits theory. *Uber* Pet. 11. That case held that a State could not require the signatories to an arbitration agreement to litigate their dispute in a state agency's dispute-resolution forum before proceeding to the arbitration provided in their agreement. *Preston* 552 U.S. at 349-350. The Court distinguished that scenario—where the State made its own official the "arbiter" of a private dispute—from cases in which the state official appears "as an advocate advancing a cause before a tribunal." *Id.* at 359. The lawsuits here fall into the latter category.

3. None of the other considerations bearing on the exercise of this Court's certiorari jurisdiction support granting review here.

Petitioners assert that the decision below is "[e]xceptionally [i]mportant" because it supposedly threatens to "render a large swath of this Court's arbitration decisions a dead letter." *Lyft* Pet. 24. But they fail to substantiate that assertion. Their primary warning is that, absent review of the question presented by this Court, States might delegate their enforcement powers to *private* attorneys, with state legislatures "deputizing just about anyone to litigate on behalf of just about anybody who agreed to arbitrate just about any dispute." *Uber* Pet. 4; *see also Lyft* Pet. 3. They cite no example of that actually happening—despite decades of state and federal precedent disagreeing with their position on the question presented. *See supra* pp. 8-10. And this would not be the case in which to address that concern in any event, because the decision below concerns only traditional executive officers—members of the "branch of government responsible for effecting and enforcing

laws." Executive, Black's Law Dictionary (11th ed. 2019). Speculation that a State might "extend" its laws in the future, *Lyft* Pet. 28, could be addressed if that actually happens.

These cases are also far from "ideal vehicle[s]" for considering the questions petitioners seek to raise. *Uber* Pet. 5; *see Lyft* Pet. 31. Uber asks whether state officials can litigate claims for monetary relief "on behalf of people who agreed to arbitrate" their own claims. *Uber* Pet. i. Lyft asks whether officials may pursue claims "for the benefit of individuals who agreed to resolve those claims in arbitration." *Lyft* Pet. i. But the People and the Labor Commissioner do not sue "on behalf of" anyone—they sue pursuant to their official duties to enforce state law for the benefit of the public. And the remedies at issue would be intended to deter future lawbreaking and protect law-abiding competitors—not merely to benefit drivers. *See supra* pp. 2, 4, 18.

Nor do the suits actually involve claims that anyone "agreed to resolve" in arbitration. *Lyft* Pet. i. Uber has introduced seven separate arbitration agreements, and Lyft five. *See* 5 AJA 1324-1327; 1 AJA 136-139. In those documents, petitioners and their drivers agreed—in varying terms—to resolve their *own* disputes in arbitration. *See, e.g.*, 2 AJA 414 ("all claims whether brought by you or the Company"). The agreements did not mention public enforcement actions brought by public officials, whose rights derive not from any contract or relationship to a contracting party but from their duty to enforce state law. And as discussed above, when public officials sue under the statutes at issue here, their conduct of the case is designed to achieve public goals rather than benefit any individual. *See supra* p. 18. That makes it even less

clear that this case would present an opportunity to directly address whether public officials may bring claims "on behalf of" or "for the benefit of" people who agreed to arbitrate "*those* claims." *See Uber* Pet. i (emphasis added); *Lyft* Pet. i.

Petitioners' litigation strategy has complicated matters further. The only generally applicable principle of state contract law that petitioners specifically invoked as a basis for enforcing their arbitration agreements against third parties is equitable estoppel. But petitioners forfeited that issue by failing to contest the court of appeal's rejection of their equitable estoppel argument. *See supra* p. 20. And petitioners have advanced shifting and inconsistent theories about what any arbitration should entail. Lyft stated that respondents should initiate arbitrations as drivers' "representatives." *See, e.g.,* Lyft Ct. App. Reply Br. 47. But it also argued that its arbitration agreements prohibit drivers from "participating in representative actions," which Lyft said includes actions brought by the government. 15 AJA 4272. Sometimes, petitioners argued that *respondents* should arbitrate on their own behalf, *see, e.g.*, 13 AJA 3786, 3821; elsewhere, they argued that respondents must wait for eligible *drivers* to initiate and complete their own individual arbitrations, *see* 2 AJA 552; 3 AJA 742; 6 AJA 1827. The evolving nature of petitioners' theories would complicate review of the questions they ask this Court to review, and underscores the infirmity of their positions.

Finally, even petitioners seem to agree that much of this case has nothing to do with arbitration. As to many of the remedies in the complaints—penalties that petitioners would owe to government agencies for their various violations—petitioners do not assert any right to arbitrate. *See supra* pp. 3, 4. And as to some

number of drivers (petitioners acknowledge they exist but do not specify how many there are), petitioners do not claim that any arbitration agreement exists at all. *See supra* p. 5; 6 AJA 1826 n.1 (Lyft states it seeks relief only as to "Drivers who have not opted out of their arbitration agreements"). Granting certiorari to consider petitioners' arbitration theory would thus delay the resolution of many issues as to which petitioners do not even attempt to invoke any federal right to arbitrate—an outcome that is especially hard to justify given the lack of any conflict in the lower courts, and lack of merit to petitioners' theory.

CONCLUSION

The petitions for writs of certiorari should be denied.

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