No. 23-1132

IN THE

Supreme Court of the United States

LYFT, INC.,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal

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REPLY BRIEF OF PETITIONER LYFT, INC.

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RULE 29.6 STATEMENT

Petitioner Lyft, Inc. is a publicly held corporation with no parent corporation. Based on Lyft's knowledge from publicly available U.S. Securities and Exchange Commission filings, no publicly held corporation or entity owns ten percent or more of Lyft's outstanding common stock.

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If the decision below stands, the FAA will be drained of meaning, as States will be able to sidestep existing arbitration agreements whenever they wish. Respondents have no answer to that fundamental problem. And numerous state courts of last resort have reached the same result as the court below based on a misreading of one of this Court's decisions—and have created a conflict with the federal courts of appeals in doing so. In view of the importance of the question presented and the state/federal disuniformity reflected in lower-court precedent, this Court's review is manifestly appropriate.

I. State Courts Are Uniformly Misreading *Waffle House*, In Conflict With Federal Courts of Appeals

A. Respondents confirm (Opp.10) that the "consensus" among state courts—in New York, Massachusetts, Iowa, Virginia, Ohio, Minnesota, and now California—is that public officials may disregard arbitration agreements when pursuing direct monetary relief on behalf of individuals who would be bound to bring the relevant claims in arbitration. This Court's review is warranted because the decision below and those other decisions rest on a persistent misunderstanding of this Court's decision in *EEOC* v. *Waffle House*, 534 U.S. 279 (2002), that only this Court can correct. Contrary to those state-court decisions, *Waffle House* does not have anything to say about preemption of state law, because it concerns only a *federal* agency's enforcement powers under a *federal* statute. See *id.* at 295-297; Pet.14-16.

Respondents seize on *Waffle House*'s statement that the FAA "does not purport to place any restriction on a nonparty's choice of a judicial forum," 534 U.S. at 289, to argue that a state agency can sweep aside any

arbitration agreement to which the agency has not "consent[ed]." Opp.14; see Opp.15-16. But there is a critical difference between the EEOC, which received its enforcement mandate directly from Congress, and state agencies, which derive their enforcement authority from state law. State officials' conduct "is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA," whereas EEOC and other federal officials' conduct is not subject to any preemption analysis. *Lamps Plus* v. *Varela*, 587 U.S. 176, 183 (2019); see *Perry* v. *Thomas*, 482 U.S. 483, 491 (1987).[1]

Respondents also assert (Opp.16) that *Waffle House* has nothing to do with harmonizing two different federal statutory schemes. That is incorrect. Looking at the FAA and the "detailed enforcement scheme created by Congress" for the EEOC, this Court decided that the latter took precedence in that specific context. 534 U.S. at 296.

B. Although the persistent misreading of *Waffle House* by the court below and the courts of multiple other States is sufficient to warrant review, Sup.Ct.R.10(c); Pet.16-17, there is more: a conflict between the state courts and the Third and Ninth Circuits.

1. The rule in the Third Circuit is clear: when two private parties have agreed to arbitrate a dispute, a state agency cannot end run that agreement by seeking monetary relief in court from one of those parties, based on that same dispute, for the benefit of the

[1] Respondents' reference (Opp.16 n.4) to the clear-statement rule for abrogating state sovereign immunity is puzzling. Respondents have not come to court unwillingly; they are demanding to proceed in court. Pet.5-7.

other. See *Olde Disc.* v. *Tupman*, 1 F.3d 202, 203 (3d Cir. 1993). Respondents say that it is not "clear" that the *Olde Discount* panel would disagree with the decision below. Opp.11. That is wrong.

The judges that formed the majority in *Olde Discount* did not have identical reasoning, but both rejected the rule adopted below. In concluding that FAA preemption applied, Judge Greenberg rebuffed the argument that "the state's enforcement action implicate[d] the public interest, and not simply" individuals' "rights," 1 F.3d at 209; contra Pet.App.19a, 21a, and found it irrelevant that state officials were not "parties to the arbitration clause," 1 F.3d at 207, 209; contra Pet.App.18a. And Judge Rosenn's concurrence concluded that the claims asserted by the state agency were not different from the claims of the private parties who had agreed to arbitrate—which is exactly what made the agency's claims "subject to" that agreement. 1 F.3d at 216; contra Pet.App.21a; Opp.17. Given those opinions' reasoning, district courts in the Third Circuit read *Olde Discount* as "controlling law" barring public officials from pursuing "victim-specific relief" in court for the direct benefit of individuals bound by arbitration agreements. *Ropp* v. *1717 Cap.*, 2004 WL 93945, at *2 (D. Del. 2004) (Jordan, J.).

Respondents' effort distinguish *Olde Discount* falls flat. Respondents rely (Opp.11) on a footnote in Judge Greenberg's opinion reserving whether "individualized relief * * * might be possible" where "widespread violations of uniform character" did not "arise from the particular relationship between" the parties. 1 F.3d at 210 n.5. But here respondents allege varying kinds of violations and seek varying amounts of money based on petitioner's particular relationship with each driver. Pet.5-7; Opp.1-2, 4. Respondents also assert

that Judge Rosenn's "rationale" is limited to actions brought by public agencies at an individual's "behest." Opp.11. But his opinion says no such thing. And if respondents were right that claims like theirs are barred only when a party to the arbitration agreement asks public officials to sue, the result would be utterly counterintuitive: state agencies would be *better* able to nullify arbitration agreements when all parties thereto would *prefer* to arbitrate. Opp.17.

2. Respondents' argument that there is no conflict with Ninth Circuit decisions (Opp.12-13) is similarly unavailing.

In cases involving insurance commissioners, the Ninth Circuit has held that the FAA forbids public officials to litigate in court claims brought on behalf of companies bound by arbitration agreements. See *Quackenbush* v. *Allstate*, 121 F.3d 1372, 1382 (9th Cir. 1997); *Bennett* v. *Liberty*, 968 F.2d 969, 972 (9th Cir. 1992). Those decisions did not turn, as respondents contend, on the fact that the public officials were "su[ing] under [an insolvent] entity's contracts." Opp.12. Rather, the Ninth Circuit held that the FAA came to bear because those officials "st[ood] in the shoes of the insolvent insurer[s]." *Bennett*, 968 F.2d at 972; accord *Quackenbush*, 121 F.3d at 1380.

Respondents likewise stand in others' shoes. Under Ninth Circuit precedent, public officials and individuals are in privity—"so identified in interest" that they legally "represent[] precisely the same right"—where those officials "seek[] restitution for [those] individual[s]," *California* v. *IntelliGender*, 771 F.3d 1169, 1176, 1179 (9th Cir. 2014); see *Chao* v. *A-One*, 346 F.3d 908, 923 (9th Cir. 2003), just as respondents do here, *e.g.*, Opp.i. If confronted with this case, then,

the Ninth Circuit would disagree with the California court and apply FAA preemption.

3. Respondents state that a few federal courts of appeals have "endorsed" their position. Opp.10. Their characterization is not fully accurate. For instance, the First Circuit decision they cite states that the court is not reaching the relevant issue. See *Lab. Rels.* v. *Healey*, 844 F.3d 318, 329 n.6 (1st Cir. 2016) ("hypothetical" dispute). In any event, respondents' argument does not help them, since any federal appellate decision disagreeing with the Third and Ninth Circuits provides *additional* grounds for this Court to grant review. Pet.19 n.6.

II. The Decision Below Is Wrong

A. Respondents hardly dispute that the rule adopted below "stands as an obstacle" to the "purposes and objectives of the FAA." *Lamps Plus*, 587 U.S. at 183. Respondents do not contest that under that rule petitioner must litigate in court whether drivers are entitled to direct monetary relief—precisely what drivers agreed to arbitrate. See *Viking River* v. *Moriana*, 596 U.S. 639, 660 (2022); *AT&T Mobility* v. *Concepcion*, 563 U.S. 333, 344 (2011); see Pet.21. Respondents do not deny that their claims would likely have preclusive effect on future arbitrations if drivers attempted to raise misclassification claims, thus permanently denying drivers and petitioner their choice of an arbitral forum. See *Perry*, 482 U.S. at 489; Pet.5-6, 26. And respondents do not dispute that, contrary to the arbitration agreements' requirement of one-on-one dispute resolution (Pet.5), respondents' suits function just like a class action—albeit without a class action's basic safeguards. Opp.2-3; see *Viking*, 596 U.S. at 651; Pet.21-26, 31.

B. Respondents try to paper over those fundamental problems—to no avail.

First, respondents argue that their claims for monetary relief for specific drivers are not *really* "on behalf of any driver" because those claims are "designed to achieve public goals rather than benefit any individual." Opp.i, 22; see Opp.18, 20. But respondents do not deny that they seek to recover money that they would then hand over to specific drivers who agreed to arbitrate claims for the *same* relief respondents are pursuing—and that respondents' demand for relief is based solely on the drivers' own experiences and alleged harms. Pet.App.21a (relief "could be sought by individual drivers on their own behalf"); see Pet.22-23; Indeed, they have publicly announced as much. *E.g.*, https://www.dir.ca.gov/DIRNews/2020/2020-65.html. Moreover, respondents seek that money under California statutes that authorize them to pursue "relief *on behalf of others*" and seek "moneys *payable to employees*." Cal. Bus. & Prof. Code § 17203, Cal. Lab. Code § 98.3(b) (emphases added). Those provisions could hardly be clearer.

Respondents' effort to identify overarching public goals is therefore irrelevant. Cf. *Viking*, 596 U.S. at 654 n.6 ("labels" do not govern). The money drivers would receive if respondents were successful—as distinct from any civil penalties or injunction respondents might obtain—would plainly be compensatory, not designed to serve the fundamentally punitive goal of "deter[ring] future lawbreaking." Opp.22; see *Kokesh* v. *SEC*, 581 U.S. 455, 464 (2017).[2] But even if

[2] Respondents rely on *Kelly* v. *Robinson*, 479 U.S. 36 (1986), for the proposition that restitution awards "operate[] 'for the benefit of the State.'" Opp.18. But *Kelly* is about *criminal* restitution,

some deterrence goal were served by paying monetary relief over to individual drivers, that is beside the point: the *effect* would be to allow state agencies to end run private arbitration agreements based solely on the agencies' status as public entities. Opp.14, 18.

That runs headlong into this Court's FAA preemption precedents. In *Viking*—a decision the court below erroneously disregarded because it "did not cite *Waffle House*," Pet.App.12a—this Court rejected the notion that state agencies enjoy some special prerogative to nullify arbitration agreements, explaining that "nothing in the FAA categorically exempts claims belonging to sovereigns from the [statute's] scope." 596 U.S. at 652 n.4. After all, the FAA was enacted to overcome "antagonism toward arbitration" among the States that had "manifested" in a "variety of devices and formulas declaring arbitration against public policy." *Epic Sys.* v. *Lewis*, 584 U.S. 497, 509 (2018). Respondents' argument that they can effectively tear up arbitration agreements in pursuit of a "public purpose" (Opp.18) is indistinguishable from the pre-FAA devices and formulas that necessitated that legislation.

Second, respondents repeat (*e.g.*, Opp.14-16) that they can litigate claims otherwise destined for arbitration because respondents never consented to arbitration. That misses the point of preemption, which does not depend on whether respondents themselves are contractually bound to arbitrate and which does not "force[]" respondents to "arbitrate" anything (Opp.14). What respondents *are* doing, and what preemption prevents them from doing, is wiping away existing,

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and contrasts such restitution with obligations that—as here—"arise[]" from a "statutory or common law duty." 479 U.S. at 52.

binding arbitration agreements entered into by drivers. The fundamental premise of the decision below is that a state legislature can vitiate arbitration agreements simply by giving someone who did not sign an agreement standing to bring the very claims covered by that agreement and then requiring that any resulting monetary relief be paid back to the person bound by the agreement. That is just another way of saying that respondents here, and States in general, have authority to veto arbitration agreements at their discretion.

Time and again, this Court has held that enforceability of arbitration agreements is not subject to States' policy preferences and cannot be undermined via state-law rules—including rules regarding consent. See, *e.g.*, *Kindred Nursing* v. *Clark*, 581 U.S. 246, 248 (2017) (preempting state rule making representatives incompetent to consent to arbitration); see also Pet.23; Bermann.Br.12-13. That principle is fatal to the decision below.

III. This Case Presents An Excellent Vehicle To Address An Extremely Important Issue

A. The question presented is exceptionally important—and becoming more so. As *amici* emphasize, state agencies across the country are increasingly bringing multi-million-dollar lawsuits specifically *designed* to circumvent agreements that obligate the individuals on whose behalf direct monetary relief is sought to arbitrate disputes. CELC.Br.11-14 (No. 23-1130). It is not uncommon for those purportedly "public" actions to be outsourced to private plaintiffs' law firms and to be brought on behalf of a "massive" number of individuals, just as a class action would be. RLC.Br.10-13; CELC.Br.9-10. And state legislatures

are actively looking for ways to expand those arbitration-agreement-avoiding stratagems. Pet.27-28, 30-31; CELC.Br.10, 14-19.

Left unchecked, that will eviscerate the FAA. Suits brought by States (or political subdivisions) will cut a broad swath through arbitration agreements on which companies like petitioner depend. And the logic of the decision below would allow state legislatures to go even farther, by deputizing private persons to litigate on a State's behalf claims for the benefit of individuals who signed arbitration agreements. Pet.26-28. At that point, no one will be able to depend on enforcement of any arbitration agreement.

Remarkably, respondents do not meaningfully contest those extremely serious problems. They merely state that the deputization of private persons to bring otherwise arbitrable claims has not "actually happen[ed]" yet, Opp.21—despite the fact that California is already using private class-action attorneys to litigate cases similar to this one, RLC.Br.10-13. But respondents do not and cannot deny that if a State can legislatively transform claims subject to arbitration into independent claims belonging to the State (Opp.17), then nothing prevents the State from authorizing private persons to pursue those claims on its behalf. Indeed, California *already* has an expansive Private Attorneys General Act authorizing private persons to bring many types of claims in the State's name. Pet.28.

Respondents also observe (Opp.13-14) that this Court previously denied a petition raising a question similar to the one presented here. That petition was flawed in various ways, including by presenting an incomplete picture of the then-existing disagreement among lower courts. Pet.13-14 (No. 21-111). In any

event, as the issue has further percolated, the problem has seriously accelerated. California—a large and important state with well-documented hostility to arbitration, Pet.28-29—now plainly sees no limits on its power to replace individual arbitrations with mass actions litigated by the State or its proxies. And the gloves are off in other States as well. *E.g.*, CELC.Br.10-19.

The time for this Court to step in is now. The States will not correct course on their own, and courts that feel constrained by *Waffle House* will not correct the States. In similar situations in the past, this Court has not hesitated to enforce the FAA. Pet.23-24.

B. Respondents ultimately trot out (Opp.22-24) a list of purported "vehicle" problems, but none has merit.

First, respondents say that this Court should wait for a case involving an agreement expressly stating that "public enforcement actions brought by public officials" must be arbitrated. Opp.22. Yet according to respondents, private persons lack "authority" to agree to arbitrate claims a State might later seek to assert on their behalves. Opp.14. In any event, the problem here is preemption, not violation of the terms of an arbitration agreement. If respondents are permitted to assert in court the very same claims drivers agreed to arbitrate, and to hand drivers the money obtained as a result of that litigation, then the agreements are a dead letter, the enforceability of all arbitration agreements is uncertain, and the FAA's purposes and objectives are fatally undermined. *Lamps Plus*, 587 U.S. at 183.

Second, respondents note that some of the specific relief they seek (an injunction and civil penalties) is

unaffected by arbitration issues and that a small number of drivers opted out of arbitration agreements. Opp.22-24. Neither fact presents any obstacle to review. The question presented affects the bulk of the case, and no one disputes that the vast majority of drivers entered into valid and binding arbitration agreements. Accordingly, allowing respondents to proceed down their current path will result in extraordinarily burdensome judicial proceedings that, under the FAA, should never occur in the first place. Moreover, as this Court has frequently explained, including arbitrable claims along with nonarbitrable claims in a single complaint does not reduce the need to enforce the FAA. *E.g.*, *KPMG* v. *Cocchi*, 565 U.S. 18, 22 (2011) (per curiam). If anything, respondents' unchallenged ability to pursue traditionally governmental forms of relief underscores that applying preemption will not strip away law-enforcement powers or interfere with governmental prerogatives. See Pet.App.85a, 123a (detailing substantial statutory civil penalties).

Third, respondents note that petitioner has not challenged the Court of Appeal's refusal to apply state-law equitable-estoppel principles to bind respondents to the arbitration agreements. Opp.23. That is true, but irrelevant. State-law estoppel and federal preemption are separate, independent routes to ensuring that those agreements remain enforceable, Pet.App.7a, and petitioner did not waive preemption by deciding not to further pursue estoppel. Indeed, given the Court of Appeal's rejection of estoppel, preemption is now the *only* way to prevent vitiation of the agreements.

Finally, respondents complain that, if petitioner prevails on the merits, it is unclear how arbitrations should proceed. Opp.23. That is of no moment here.

If this Court rules that respondents cannot proceed in court with claims for direct monetary relief for drivers that signed arbitration agreements, it will be *respondents'* decision whether to try to arbitrate those claims. And if respondents initiate individual arbitrations on drivers' behalves under the arbitration agreements, logistical issues about how to conduct such arbitrations would be for the arbitrators to decide. Lyft.Ct.App.Reply.Br.47; see *Howsam* v. *Dean Witter Reynolds*, 537 U.S. 79, 84-85 (2002). Respondents can present their perspective on those points once the critically important question presented here is resolved.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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