No. 24-304

In the
Supreme Court of the United States

LABORATORY CORPORATION OF AMERICA HOLDINGS, D/B/A LABCORP,

Petitioner,

v.

LUKE DAVIS, JULIAN VARGAS, AND AMERICAN COUNCIL OF THE BLIND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Respondents.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether district courts may certify classes that contain uninjured class members.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an amicus urging strict adherence to rules barring federal-court adjudication of claims by those who lack Article III standing. *See*, *e.g.*, *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020); *Spokeo v. Robins*, 578 U.S. 330 (2016). WLF also participates in litigation to advance its view that the Constitution's separation of powers bars any one branch from exercising power reserved to another branch. *See, e.g.*, *Lucia v. SEC*, 585 U.S. 237 (2018); *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014).

INTRODUCTION

Just under four years ago, in *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021), this Court rebuked the Ninth Circuit for allowing a district court to enter judgment for uninjured plaintiffs. There, the district court lacked jurisdiction to enter the judgment because plaintiffs who suffered no injury-in-fact lacked Article III standing to sue in federal court. Most courts of appeals have faithfully applied that decision and held that district courts cannot certify classes with uninjured members. But the Ninth Circuit has refused to implement this Court's clear directive.

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

The decision below blessed certifying classes with thousands of plaintiffs who suffered no concrete injury. This holding expands the legislative and judicial powers—at the expense of the executive power—by allowing the plaintiffs' bar to enforce federal statutes outside the Constitution's framework. Private-party enforcement of federal law violates the separation of powers central to our republican form of government.

Affirming the Ninth Circuit's decision would also allow uninjured individuals to invoke federal court jurisdiction based on defendants' violating a federal statute unconnected to an actual injury. This would greatly expand federal courts' jurisdiction beyond those "cases" and "controversies" over which they have subject-matter jurisdiction. This Court should reject the Ninth Circuit's erosion of Article III's injury requirement and the Constitution's careful separation of powers by reversing the decision below.

STATEMENT

Labcorp operates around 2,000 diagnostic-testing collection centers nationwide. Pet. App. 15a (citation omitted). As one of the largest providers in the country, tens of millions of Americans visit these centers annually. Before October 2017, a Labcorp employee manually checked in each patient. Then Labcorp began installing tablet kiosks at its centers to provide patients with another check-in option. *Id.* (citation omitted).

Still, Labcorp knew that some patients could not—or did not want to—use the kiosks to check-in.

So it gave front-desk staff the same technology to check-in patients. Patients who use the kiosks cannot access any information unavailable to front desk staff. At least one plaintiff, the American Council for the Blind, did not understand these realities. Its corporate designee mistakenly thought that patients had to use the kiosks. When asked if it would be discriminatory to allow patients to choose between using the kiosk and checking in at the front desk, she said it would not be.

Julian Vargas went to a Labcorp center in Van Nuys, California. He checked in at the front desk without incident and was quickly taken to a room for diagnostic testing. Similarly, Luke Davis visited a center in Philadelphia. After checking in online or with a staff member at the center (he visited the center multiple times), he received the diagnostic testing services he sought.

Although both named plaintiffs received the diagnostic testing they sought, they sued Labcorp and moved to certify a nationwide injunctive-relief class and a California-only damages class. The District Court certified the classes, and the Ninth Circuit granted permission to appeal under Federal Rule of Appellate Procedure 23(f). Pet. App. 9a. Relying on circuit precedent, the Ninth Circuit affirmed the class certification order. Pet. App. 1a-8a. This Court granted review.

SUMMARY OF ARGUMENT

I.A. The separation of powers is a central tenet of our constitutional republic. By ensuring that any one branch does not amass too much power, the Framers sought to prevent the accumulation of power that leads to tyranny. The Constitution safeguards the separation of powers by extending the judicial power of the United States to only true cases and controversies. An essential element of any case or controversy is standing. And a plaintiff must suffer a concrete, particularized injury to establish standing to sue in federal court.

B. The Framers limited the judiciary's power to cases and controversies so that it did not encroach on the other branches' powers. The Ninth Circuit's holding is sharply at odds with this Court's historical understanding that neither Congress nor the judiciary may dilute the case or controversy requirement. This Court has consistently rejected assertions that federal courts may entertain citizen suits to vindicate a generalized interest in the proper administration of the laws, even when Congress has explicitly authorized such suits by statute.

II.A. Article III's injury-in-fact requirement is grounded in separation-of-powers principles. Traditionally, Anglo-American courts have been limited to deciding cases or controversies between parties. The courts say what the law is while resolving cases or controversies. Congress, on the other hand, makes the laws while the President enforces the laws. Requiring that all plaintiffs have standing helps ensure that courts do not interfere with the other branches' powers.

B. Unless lower courts adhere strictly to Article III's injury-in-fact requirement, private plaintiffs and the judiciary will enforce the laws—a role exclusively reserved to the Executive Branch. The Framers thought that the President's most important duty was executing federal law. Under the Take Care Clause, the President has the exclusive duty to ensure compliance with federal law.

The cornerstone of the President's enforcement authority is the exercise of prosecutorial discretion—the ability to control the initiation, prosecution, and termination of actions to enforce federal law. When, as here, a class member suffers no injury-in-fact, certifying a class deprives the President of the prosecutorial discretion that lies at the heart of the President's power to faithfully execute the laws.

Congressional delegation of the President's prosecutorial discretion to a private party is permissible only when the President retains enough control over that party to ensure that the President can perform his constitutional duties under the Take Care Clause. Because the ADA gives the President no control over private lawsuits, the Ninth Circuit's holding impermissibly transfers a core Article II function to private plaintiffs. By authorizing federal courts to require compliance with federal law at the behest of uninjured individuals, the decision below undermines the Constitution's careful separation of powers and should be reversed.

III. It is immaterial whether *some* class members have Article III standing. For a federal court to certify a class, *every* member of the class must have Article III standing. Otherwise, a court would be

exercising jurisdiction without a case or controversy between the uninjured class members and the defendant. Exercising such jurisdiction defies this Court's well-settled precedent.

ARGUMENT

I. INJURY-IN-FACT STANDING IS CRITICAL TO THE SEPARATION OF POWERS.

The Constitution extends the "judicial Power" of the United States to only "Cases" and "Controversies." U.S. Const. art. III, § 2. A plaintiff's standing to sue is a necessary element of a case or controversy. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Standing includes a prerequisite that the plaintiff "suffered an injury in fact." *Spokeo*, 578 U.S. at 338 (citations omitted). These standing requirements are necessary to maintaining the separation of powers.

A. The Constitution Demands A Clear Separation Of Powers Among The Three Branches Of Government.

The Framers viewed tyranny as both the abuse of power and the accumulation of power. As James Madison said, "[n]o political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty," than the separation of powers. *Dep't of Transp. v. Ass'n of Am. Railroads*, 575 U.S. 43, 74 (2015) (Thomas, J., concurring) (quoting *The Federalist* No. 47, 301 (Charles Rossiter ed. 1961)). The Constitution thus "vest[s] the authority to exercise different aspects of the people's sovereign power in distinct

entities." *Gundy v. United States*, 588 U.S. 128, 152 (2019) (Gorsuch, J., dissenting).

"To the [F]ramers," the powers vested to each branch "had a distinct content." *Gundy*, 588 U.S. at 153 (Gorsuch, J., dissenting). This Court has thus recognized that the "principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *INS v. Chadha*, 462 U.S. 919, 946 (1983) (quoting *Buckley v. Valeo*, 424 U.S. 1, 124 (1976) (per curiam)).

Montesquieu had explained that, without the separation of powers, "there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Charles de Montesquieu, *Spirit of the Laws*, 113 (Lonang Institute ed., T. Nugent trans. 2005) (1748). Similarly, "there is no liberty if the power of judging be not separated from the legislative and executive powers." *Id.* This is because citizens "would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of the oppressor." *Id.* Recently, Brazil Supreme Court Justice Alexandre de Moraes proved this point by oppressing millions of Brazil's citizens. *See* ElÉonore Hughes & Gabriela SÁ Pessoa, *Brazil's X ban drives outraged Bolsonaro supporters to rally for 'free speech,'* Wash. Post (Sept. 7, 2024), https://tinyurl.com/2s3fchsj.

The Framers adopted Montesquieu's model. The Constitution divides federal power among three

branches—Legislative, Executive, and Judicial. Each may perform only specific duties. This tripartite distribution of power "is not merely a matter of convenience or of governmental mechanism." *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933), *superseded on other grounds*, District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473. Rather, this Court has long recognized that the "ultimate purpose" of the separation of powers is "to protect the liberty and security of the governed." *Metro. Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991).

This structure "assure[s] full, vigorous, and open debate on the great issues affecting the people and [provides] avenues for the operation of checks on the exercise of governmental power." *Bowsher v. Synar*, 478 U.S. 714, 722 (1986). So "[w]hile the Constitution diffuses power * * * to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 297 (2020) (Kagan, J., concurring and dissenting) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)).

Although "each branch has traditionally respected the prerogatives of the other two," this "Court has been sensitive to its responsibility to enforce the principle when necessary." *Metro. Wash. Airports Auth.*, 501 U.S. at 272. It now falls once again to this Court to protect the separation of powers by reversing the disastrous decision below.

B. Article III's Injury-In-Fact Requirement For Standing Is Grounded In Separation-Of-Powers Concerns.

A federal court's adjudication of claims absent an injury-in-fact violates fundamental separation-of-powers principles. "[I]f the judicial power extended * * * to every question under the laws * * * of the United States," then "[t]he division of power [among the three branches of government] could exist no longer, and the other departments would be swallowed up by the judiciary." 4 Papers of John Marshall 95 (Charles T. Cullen et al. eds. 1984); *see Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133 (2011).

To invoke federal-court jurisdiction, plaintiffs must seek redress for an "injury in fact." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990). This bedrock requirement of Article III jurisdiction "cannot be removed." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009).

The Constitution's strict limits on federal jurisdiction ensure that courts stay within their lanes. *See Ziglar v. Abbasi*, 582 U.S. 120, 135-36 (2017). Article III's standing requirements therefore ensure that federal courts decide only cases "traditionally thought to be capable of resolution through the judicial process." *Raines v. Byrd*, 521 U.S. 811, 819 (1997) (quoting *Flast v. Cohen*, 392 U.S. 83, 97 (1968)).

By allowing the judiciary to decide only cases and controversies, "the Constitution restricts it to the

traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of the law." *Summers*, 555 U.S. at 492. The injury-in-fact requirement thus "ensures that the courts will more properly remain concerned with tasks that are, in Madison's words, 'of a Judiciary nature.'" John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1232 (1993) (citation omitted).

In short, Article III's concrete injury-in-fact requirement is "a crucial and inseparable element" of separation-of-powers principles embedded in the Constitution. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 881 (1983). It is the injury-in-fact requirement that "makes possible the gradual clarification of the law through judicial application." *Allen v. Wright*, 468 U.S. 737, 752 (1984), *abrogated on other grounds, Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *see DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340-41 (2006).

Failure to enforce Article III's core standing requirements leads to "an over-judicialization of the processes of self-governance." Scalia, 17 Suffolk U. L. Rev. at 881 (citing Donald Horowitz, *The Courts and Social Policy* 4-5 (1977)). Ultimately, the courts' seizure of power comes at the expense of the people and their elected representatives. By preventing an unelected judiciary from exercising executive or legislative powers—the exclusive province of the political branches—Article III's injury-in-fact requirement cabins the federal judiciary to its narrow historical role.

The Ninth Circuit's decision severely erodes the Constitution's carefully balanced separation of powers and should be reversed.

II. ADJUDICATING CLAIMS BY CLASS MEMBERS WHO LACK A CONCRETE INJURY VIOLATES THE SEPARATION OF POWERS.

Any time one branch of government enlarges its power at the expense of another, it violates the separation of powers. *See Clinton v. Jones*, 520 U.S. 681, 701 (1997). Allowing federal courts to adjudicate claims by uninjured class members, as the Ninth Circuit did here, violates the separation of powers by enlarging judicial and power at the expense of executive power. At the same time, authorizing federal courts to enforce laws at the behest of class members who have suffered no concrete injury would permit Congress to unduly interfere with the President's constitutional duty to enforce the nation's laws under the Take Care Clause.

A. The Decision Below Violates Article III.

The injury-in-fact requirement ensures that cases will be resolved "not in the rarified atmosphere of a debating society" but with "a realistic appreciation of the consequences of judicial action." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 472 (1982). The Ninth Circuit's rule, on the other hand, "create[s] the potential for abuse of the judicial process, distort[s] the role of the Judiciary in its relationship to the Executive and the Legislature, and open[s] the Judiciary to an arguable charge of

providing 'government by injunction.'" *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222 (1974) (citation omitted).

An Article III injury "must be likely, as opposed to merely speculative." *United States v. Windsor*, 570 U.S. 744, 757 (2013) (quotation omitted). Here the uninjured class members' purported injury is pure speculation because many of the class members were unaware of the kiosks. And many of those aware of the kiosks preferred checking-in in person at the front desk. For these class members, the alleged injury is no more than one's bare "exposure," in a waiting room, to a kiosk one never tries to use. That is a phantom injury—neither concrete nor particularized.

Any injury that those class members suffered is therefore "theoretical." *Huff v. TeleCheck Servs., Inc.*, 923 F.3d 458, 462 (6th Cir. 2019) (citation omitted). And theoretical injuries are insufficient for Article III standing. *Id.* (citation omitted). By "ignoring the concrete injury requirement" the Ninth Circuit "discard[ed] a principle so fundamental to the separate and distinct constitutional role of the Third Branch—one of the essential elements that identifies those 'Cases' and 'Controversies' that are the province of the courts rather than of the political branches." *Lujan*, 504 U.S. at 576.

Nor may Congress "erase Article III standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines*, 521 U.S. at 820 n.3 (citing *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979)); *see TransUnion*, 594 U.S. at 426. But that is what the Ninth Circuit allowed here. By permitting uninjured

class members to sue for ADA violations, it read the ADA as giving uninjured plaintiffs the right to sue. This it could not do.

B. The Decision Below Contravenes Article II's Take Care Clause.

Allowing recovery for uninjured class members also invades the exclusive province of the President to enforce federal law under the Take Care Clause. *See* U.S. Const. art. II, § 3. "As Madison stated on the floor of the first Congress, 'if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and *controlling* those who execute the laws.'" *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting 1 Annals of Cong. 463 (1789) (emphasis added)).

This Court has recognized that "[t]he Constitution does not leave to speculation who is to administer the laws enacted by Congress." *Printz v. United States*, 521 U.S. 898, 922 (1997). It is "the President," both "personally and through officers whom he appoints" who enforces federal law. *Id.* The Take Care Clause thus imposes on the Executive Branch a duty to undertake all necessary means, including suing in federal court, to ensure compliance with federal law. *Allen*, 468 U.S. at 761.

"A lawsuit is the ultimate remedy for a breach of the law," and the Constitution entrusts the Executive—not the other branches—"to take Care that the Laws be faithfully executed." *Buckley*, 424 U.S. at 138. Lacking any concrete injury-in-fact, the uninjured class members seek to vindicate the public interest triggered by a bare violation of federal law.

But "[v]indicating the public interest * * * is the function of Congress and the Chief Executive." *Lujan*, 504 U.S. at 576 (emphasis removed). The separation of powers bars Congress from giving private parties the ability to vindicate the public interest—that is the exclusive province of the Executive Branch.

By allowing Vargas—the only plaintiff it found to have standing, Pet. App. 3a-4a,—to pursue claims on behalf of uninjured class members, the Ninth Circuit's holding effectively transfers the President's enforcement duty under the Take Care Clause to politically unaccountable private parties. Such a move "violates the basic principle that the President cannot delegate ultimate responsibility or the active obligation to supervise that goes with it, because Article II makes a single President responsible for the actions of the Executive Branch." *Free Enter. Fund*, 561 U.S. at 496 (quotation omitted).

Consistent with Article II, a plaintiff lacks standing to seek the mere "vindication of the rule of law." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 106 (1998). Indeed, this Court's precedents weigh "against recognizing standing in a case brought, not to enforce specific legal obligations whose violation works a direct harm, but to seek a restructuring of the apparatus established by the Executive Branch to fulfill its legal duties." *Allen*, 468 U.S. at 761. A contrary view, one allowing any private person to sue whenever the law is violated, diminishes the political accountability of the President's enforcement power.

Allowing uninjured plaintiffs to pursue claims also disrupts "the balance that the Framers created to protect the executive from legislative power." James

Leonard & Joanne C. Brant, *The Half-Open Door: Article II, the Injury-In-Fact Rule, and the Framers' Plan For Federal Courts of Limited Jurisdiction*, 54 Rutgers L. Rev. 1, 115 (2001). No matter what the ADA says, an injury in law is not an injury in fact. The Ninth Circuit's decision disrupts this balance by giving Vargas the ability to vindicate the rights of uninjured class members. Again, this is the President's—not the plaintiffs' bar's— job.

The President's ability to control the initiation, prosecution, and termination of actions to ensure compliance with federal law is crucial to taking care that the laws are enforced. The hallmark of this enforcement authority is the exercise of prosecutorial discretion. Such discretion "creates a troubling potential for abuse, even when it is exercised by a governmental entity that is subject to constitutional and other legal and political constraints." Tara Leigh Grove, *Standing as an Article II Nondelegation Doctrine*, 11 U. Pa. J. Const. L. 781, 790 (2009). That is why "the Constitution prohibits Congress and the Executive Branch from delegating such prosecutorial discretion to private parties, who are subject to no such requirements." *Id.*

A statute divesting the President of some measure of prosecutorial discretion must "give the Executive Branch sufficient control * * * to ensure that the President is able to perform his constitutionally assigned duties." *Morrison v. Olson*, 487 U.S. 654, 696 (1988). *Morrison* involved a constitutional challenge to the Ethics in Government Act of 1978, which authorized the appointment of an independent counsel to prosecute high-ranking government officials. *See id.* at 660-61. In upholding

the law, the Court emphasized that the challenged statute included "several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel," which satisfied the Take Care Clause. *Id*. For example, the Attorney General could "remove the counsel for 'good cause,'" controlled the scope of the litigation, and ensured that the prosecution was pursued in the public interest. *Morrison*, 487 U.S. at 696.

None of the statutory safeguards identified in *Morrison* are present here. Plaintiffs are subject to no control or oversight by the Executive Branch. In fact, the ADA does not even require plaintiffs to notify the Attorney General of their suit. And unlike the independent counsel at issue in *Morrison*, the motivation for uninjured private plaintiffs is financial gain unrelated to the public good. Without "sufficient control" by the Executive, the Ninth Circuit's understanding of the reach of uninjured-class-member standing violates Article II.

III. THIS COURT SHOULD CLARIFY THAT THE SAME STANDING RULES APPLY TO ABSENT CLASS MEMBERS AND NAMED CLASS MEMBERS.

Standing "is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Rule 23 does not change that reality. Federal courts can "provide relief to claimants, in individual or class actions," but only if those claimants "have suffered, or will imminently suffer, actual harm." *Id*. at 349. "That a suit may be a class action," in other words, "adds nothing to the question of standing" under Article III. *Spokeo*, 578 U.S. at 338 n.6 (quoting *Simon v. E. Kentucky Welfare*

Rts. Org., 426 U.S. 26, 40 n.20 (1976)); *see Warth v. Seldin*, 422 U.S. 490, 502 (1975).

It follows that "unnamed class members" who have not suffered an injury-in-fact "lack a cognizable injury under Article III." *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 768 (5th Cir. 2020). Because the "constitutional requirement of standing is equally applicable to class actions," "each [class] member must have standing." *Halvorson v. Auto-Owners Ins.*, 718 F.3d 773, 778-79 (8th Cir. 2013) (citations omitted). It follows that a class cannot be certified if it includes members who would lack standing to sue individually. Put differently, "a named plaintiff cannot represent a class of persons who lack the ability to bring suit themselves." *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 620 (8th Cir. 2011) (quotation omitted).

This Court's Article III precedents confirm that district courts cannot certify a class with uninjured members. In *Tyson Foods, Inc. v. Bouaphako*, the Court explained that judgment is improper if "no reasonable juror" could believe, based on the representative evidence, that each class member was injured. 577 U.S. 442, 459 (2016). Chief Justice Roberts, joined by Justice Alito, concurred in *Tyson Foods* while expanding on the Article III analysis. "Article III," the Chief Justice wrote, "does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *Id.* at 466.

In *TransUnion*, the full Court embraced Chief Justice Roberts's view and clarified that "[e]very class member must have Article III standing in order to recover individual damages." 594 U.S. at 431. But

because the Court resolved *TransUnion* on narrower grounds, it left for another day "whether every class member must demonstrate standing before a court certifies a class." *Id.* at 431 n.4. Still, when leaving that issue for another day, the Court cited *Cordoba v. DIRECTV, LLC*, which suggests that a district court may not certify classes with many uninjured members. 942 F.3d 1259, 1277 (11th Cir. 2019).

Permitting certification of a class including those who suffered no Article III injury raises the same separation-of-powers issues as allowing uninjured plaintiffs to sue individually on their own behalf. In both cases, the President cannot exercise his core power under the Take Care Clause. This strikes at the heart of our constitutional structure.

If anything, the concerns here are greater than when a single uninjured plaintiff sues in federal court. In those cases, the uninjured plaintiff decides which violations of federal law to vindicate. Here, however, the uninjured class members are not choosing to vindicate a right. Rather, named plaintiffs and their counsel are purportedly vindicating interests for these uninjured individuals.

Allowing private parties to enforce the law is also problematic because plaintiffs' attorneys are not trying to promote public welfare. Rather, they want to force Labcorp into an in terrorem settlement. *Cf. AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) ("not[ing] the risk of 'in terrorem' settlements that class actions entail" (citation omitted)); *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 149 (2008) ("The extensive discovery and the potential for uncertainty and disruption in a [class

action] could allow plaintiffs with weak claims to extort settlements from innocent companies." (citation omitted)).

Vindicating the interest of others is the President's job. *See Lujan*, 504 U.S. at 576. The Constitution does not give that duty to the plaintiffs' bar. Yet the Ninth Circuit green-lighted such an enforcement action. This Court should reverse and clarify that all class members must have suffered an Article III injury.

CONCLUSION

This Court should reverse.

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