No. 24-304

In the Supreme Court of the United States

LABORATORY CORPORATION OF AMERICA HOLDINGS, DBA LABCORP, PETITIONER

v.

LUKE DAVIS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING NEITHER PARTY

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QUESTION PRESENTED

Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury.

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INTEREST OF THE UNITED STATES

This case presents the question whether a class may be certified under Federal Rule of Civil Procedure 23(b)(3) if some members of the proposed class lack Article III injuries. The United States has a substantial interest in that question. The federal government is charged with enforcing many laws establishing private rights of action through which individuals may seek redress in class actions, including the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, which underlies respondents' claims here. The government also may itself bring class actions to combat discrimination, including for money damages, such as on behalf of servicemembers under the Uniformed Ser-

vices Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*

At the same time, the government is a potential defendant in many private class actions, including for monetary relief, under a variety of statutes, such as the Tucker and Little Tucker Acts, 28 U.S.C. 1346(a), 1491; the Privacy Act of 1974, 5 U.S.C. 552a; the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*; the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* And essentially all class actions in the Court of Federal Claims under the Tucker Act are brought under a provision that parallels Rule 23(b)(3)'s requirements. See Fed. Cl. R. 23(b) (requiring every class action to show predominance and superiority).

INTRODUCTION

In the decades since the class action "gained its current shape in an innovative 1966 revision" to Rule 23, "class-action practice has become ever more 'adventuresome.'" *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 613, 617 (1997). As class actions become more sprawling and the potential liability larger, the decision on class certification often becomes dispositive: a denial can sound the death knell of the litigation, while a grant can create substantial pressure to settle.

Rule 23 of the Federal Rules of Civil Procedure is intended to serve as a check on class certification by requiring, at a minimum, that all class members "possess the same interest and suffer the same injury." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 349 (2011) (citation omitted). That requirement is all but dispositive here. Courts should not certify a class under Rule 23(b)(3)—which permits class actions seeking money

damages—when some members of the proposed class lack any Article III injury.

Certifying such a class not only would violate Rule 23, but also would be nonsensical as a practical matter. "Every class member must have Article III standing in order to recover individual damages" at the end of the litigation, *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021), which in many cases might take the form of a settlement induced by that very certification. Ignoring standing at the class-certification stage, only to scrutinize it carefully at the damages or judgment stage, makes little sense, especially given that Article III standing is supposed to be a threshold issue. Article III standing also plays a critical role in enforcing the separation of powers by limiting the judiciary to resolving only true cases or controversies. That constitutional dimension makes it all the more important for courts to assure themselves that all class members made parties to the case have Article III standing before taking the coercive step of certifying a class.

This Court should thus vacate the decision below, which applied circuit precedent incorrectly holding that a class may be certified even if it is defined to include many members who lack Article III injuries. This Court need not do more to resolve the circuit conflict at issue. On remand, the lower courts can address case-specific questions such as whether the classes in this case, as defined, actually include members who lack Article III injuries.

STATEMENT

1. Petitioner owns and operates patient service centers offering clinical diagnostic laboratory services, such as blood and urine tests. See Pet. App. 15a. Patients who visit a center may check in for their appoint-

ments with a staff member at the front desk or by using a touchscreen kiosk. See *id.* at 14a-15a. Respondents are legally blind individuals and an organization whose members are legally blind and visually impaired. See *id.* at 14a. They allege that the touchscreen kiosks are inaccessible to visually impaired people and thus violate the ADA, other federal civil-rights laws, and California state laws. See *id.* at 13a.

As relevant here, respondents moved to certify a nationwide class seeking injunctive and declaratory relief under Rule 23(b)(2) of the Federal Rules of Civil Procedure, as well as a California-only class of individuals seeking money damages under Rule 23(b)(3). See Pet. App. 15a-16a. As to the Rule 23(b)(3) class, respondents sought only statutory damages under California's Unruh Civil Rights Act, Cal. Civ. Code §§ 51 *et seq.*, which provides that any violation of the ADA also constitutes a violation of the Unruh Act, § 51(f); see § 52(a) (providing for "in no case less than" $4000 in statutory damages for each violation, plus attorney's fees). Respondents disclaimed seeking "class recovery for actual damages, personal injuries or emotional distress." Pet. App. 14a (citation omitted).

Following discovery, the district court certified both classes. See Pet. App. 12a-47a, 48a-63a. As relevant here, the court certified a California-only class seeking money damages under Rule 23(b)(3) comprising:

> All legally blind individuals who visited a LabCorp patient service center with a LabCorp Express Self-Service kiosk in California during the applicable limitations period, and who, due to their disability, were unable to use the LabCorp Express Self-Service kiosk.

Pet. App. 63a. The court also certified a nationwide class seeking injunctive relief with the same class definition, but with "the United States" replacing "California." *Ibid.* The court did not address whether the classes, as defined, included members who did not suffer any Article III injuries. See *id.* at 3a.

2. After granting a petition for interlocutory review of the class-certification order under Rule 23(f), Pet. App. 9a, the court of appeals affirmed that order. *Id.* at 1a-8a. As relevant here, the court rejected petitioner's contention that the classes did not satisfy Rule 23(a)(2)'s commonality requirement, and thus could not be certified, because "some potential class members may not have been injured," as required for Article III standing. *Id.* at 5a n.1. The court explained that under its precedent, "Rule 23 permits 'certification of a class that potentially includes more than a de minim[i]s number of uninjured class members.'" *Ibid.* (citation omitted).

SUMMARY OF ARGUMENT

A. The prerequisites of Rule 23 of the Federal Rules of Civil Procedure cannot be satisfied by a class containing members who lack Article III injuries. This Court has repeatedly made clear that all class members must share the same injury, which necessarily includes a cognizable Article III injury. And when multiple plaintiffs seek separate money judgments, this Court has recognized that each award is a separate item of relief for which each recipient must have Article III standing. It follows that each class member in a Rule 23(b)(3) damages class likewise must have Article III standing. Indeed, when the Constitution was ratified, class actions —which grew out of multiparty bills of peace in equity— would not have included uninjured absent plaintiffs.

There is no sound basis to think the judicial power extends to resolving such suits today.

B. Because Rule 23's requirements cannot be satisfied where the existence of Article III injuries varies across the class, class representatives must demonstrate that all members of the putative class have Article III standing before that class may be certified. Class certification is no mere pleading requirement, and Article III standing must be demonstrated with the degree of proof required at the relevant stage of litigation. Thus, class representatives must affirmatively demonstrate that all class members have Article III standing at the certification stage, and cannot defer that showing to later-stage litigation. This Court already has made clear that every class member must have Article III standing to ultimately recover damages. Given that Article III standing is a threshold issue, it should be addressed before the class is certified.

Considerations of fairness and practicality also support such a requirement. Class certification fundamentally alters the scope of the litigation and often creates substantial pressure to settle. But a district court must approve any settlement, and a court may not approve payment to any class member who lacks Article III standing. It would make little sense for the court to ignore standing at the class-certification stage, only to scrutinize standing carefully when confronted with the very settlement that the certification order might well have induced.

C. This Court has sometimes addressed the merits of a non-class dispute after determining that only a single plaintiff had Article III standing. But those cases did not involve plaintiffs who would be entitled to separate individualized relief under the Court's judgment,

much less to the individual monetary relief that members of a certified Rule 23(b)(3) class seek.

Nor are Rule 23's requirements satisfied as long as the ratio of injured to uninjured members is sufficiently large. Predominance under Rule 23(b)(3) requires that common questions predominate over individualized ones—and the presence of some uninjured class members means that any *other* legal or factual questions common to the class are unlikely to predominate over individualized questions of injury.

The First Circuit has suggested that a class may be certified if it contains only a *de minimis* number of members who lack any Article III injury. Although the law generally does not concern itself with trifles, this Court has made clear that *every* class member must have Article III standing to collect damages under a judgment, and it stands to reason that every class member likewise should have Article III standing before a court takes other coercive actions, such as certifying a class. In any event, the court below held that a class could be certified even if it had *more* than a *de minimis* number of uninjured members.

D. Because the court of appeals' decision contravenes the above principles, this Court can vacate and remand solely on the ground that a Rule 23(b)(3) class should not be certified if it is defined in a manner that includes class members who lack Article III standing. This Court need not resolve further, case-specific questions, such as whether the Rule 23(b)(3) class in this particular case includes any members who lack Article III standing or whether the class could be redefined to cure that infirmity. This Court ordinarily leaves such questions for the lower courts to resolve on remand.

ARGUMENT

A. Rule 23 Requires Class Members To Share The Same Article III Injury

1. A class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano* v. *Yamasaki*, 442 U.S. 682, 700-701 (1979). In theory, a class action simply permits "individual claims to be aggregated in a single action in order to bring about litigation convenience and provide a viable procedural means of vindicating the underlying substantive claims." Martin H. Redish, *Class Actions and the Democratic Difficulty*, 2003 U. Chi. Legal F. 71, 94 (2003). In practice, however, class actions —especially those seeking monetary relief for each class member—can distort the underlying substantive right. See *id.* at 93-107. And the mere act of certifying a large class "can exert substantial pressure on a defendant 'to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability.'" *Amgen Inc.* v. *Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455, 474 (2013) (citation omitted); see *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011) (acknowledging "the risk of 'in terrorem' settlements that class actions entail"). At the same time, because a final judgment in a class action disposes of the rights of absent class members, due process requires that "the procedure adopted[] fairly insures the protection of the interests of absent parties who are to be bound by it." *Hansberry* v. *Lee*, 311 U.S. 32, 42 (1940); see *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 847 (1999).

Rule 23 of the Federal Rules of Civil Procedure sets forth the requisite certification procedure. Rule 23 is stringent: this Court has emphasized that "certification is proper only if 'the trial court is satisfied, after a rig-

orous analysis, that the prerequisites'" of that rule "'have been satisfied.'" *Comcast Corp.* v. *Behrend*, 569 U.S. 27, 33 (2013) (citation omitted). Consistent with the conceptualization of the class action as simply a procedural aggregation device, those prerequisites rightly focus on the *sameness* of the class members' claims. For instance, Rule 23(a)'s interrelated requirements of commonality, typicality, and adequacy all serve to "effectively 'limit the class claims to those fairly encompassed by the named plaintiff's claims.'" *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 349 (2011) (citation omitted); see *id.* at 349 n.5. And in cases seeking monetary relief, Rule 23(b)(3)'s requirement that questions of law or fact common to the class predominate over individualized ones imposes a related but "far more demanding" degree of sameness. *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 624 (1997); see *Comcast*, 569 U.S. at 33-34. Even as to classes seeking injunctive or declaratory relief, courts may not order class certification without finding that such relief is "appropriate respecting the class *as a whole*." Fed. R. Civ. P. 23(b)(2) (emphasis added).

2. This Court has repeatedly made clear that, at a minimum, a class does not satisfy Rule 23's requirements unless all class members have suffered the *same injury*. For example, the Court has explicitly recognized that "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" which "does not mean merely that they have all suffered a violation of the same provision of law." *Wal-Mart*, 564 U.S. at 349-350 (citation omitted).

In *Wal-Mart*, the Court held that a class of workers alleging employment discrimination did not satisfy Rule 23(a)'s commonality requirement because class mem-

bers would have been subject to the discretionary hiring decisions of different supervisors, for potentially different reasons, at different times, without some unifying feature. See 564 U.S. at 355-357. And in *Amchem*, the Court held that a class of plaintiffs then suffering illnesses because of exposure to the defendant's asbestos-containing products could not adequately represent plaintiffs who had theretofore only been exposed and were thus at risk of future illness. See 521 U.S. at 626.

Those cases stand for the proposition that variation in the *type* of injury suffered by class members generally precludes satisfying the Rule 23 prerequisites. Variation in the *existence* of an injury should preclude doing so as well. For example, in *Amchem*, far less separated the exposed-and-injured class members from the exposure-only class members than would separate class members with Article III injuries from those without. If the former could not satisfy the predominance requirement, *a fortiori* the latter may not either. Cf. *East Texas Motor Freight System, Inc.* v. *Rodriguez*, 431 U.S. 395, 403-404 (1977) (certification of employment-discrimination class improper where named plaintiffs were unqualified for the positions to which they applied and thus "could have suffered no injury as a result of the alleged discriminatory practices").

That an Article III injury is a threshold jurisdictional requirement makes the difference between injured and uninjured class members even more stark. Article III standing "'enforces the Constitution's case-or-controversy requirement,'" which "is crucial in maintaining the 'tripartite allocation of power' set forth in the Constitution"; "[i]f a dispute is not a proper case or controversy, the courts have no business deciding it." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 341-342

(2006) (citations omitted). The difference between a class member who has an Article III injury and one who does not is thus the difference between a federal court's having—and lacking—the very power to enter a judgment on that class member's individual claim. A class containing both types of members lacks the necessary commonality on that critical point. And it is hard to see how some *other* common question could predominate given how foundational that difference about standing would be.

3. That Rule 23 requires each class member to have Article III standing is particularly evident when the class seeks money damages. For one thing, Rule 23(b)(3)'s predominance requirement is "far more demanding" than commonality. *Amchem*, 521 U.S. at 624. For example, *Amchem* held that the class as defined could not satisfy Rule 23(b)(3)'s predominance requirement given the variation in (among other things) levels of exposure and symptoms among class members. *Id.* at 623-624.

In addition, each class member's monetary award is a separate item or form of relief. This Court has repeatedly made clear that "standing is not dispensed in gross," *Murthy* v. *Missouri*, 603 U.S. 43, 61 (2024) (citation omitted); *Lewis* v. *Casey*, 518 U.S. 343, 358 n.6 (1996), and that "a plaintiff must demonstrate standing separately for each form of relief sought," *DaimlerChrysler*, 547 U.S. at 352 (citation omitted); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185 (2000). This Court also has recognized that in a case with multiple plaintiffs, the separate monetary award sought by each plaintiff is different relief for which each intended recipient must demonstrate Article III standing. Specifically, in *Town of Chester* v. *Laroe Estates, Inc.*, 581 U.S. 433 (2017),

the Court held that a putative intervenor of right must independently establish his own Article III standing if he seeks "relief that is different from that which is sought by a party with standing." *Id.* at 440. Critically, the Court explained that cases involving such "different" relief "include[] cases in which both the plaintiff and the intervenor seek separate money judgments in their own names," even when both rely on the same theory of liability premised on the same actions by the same defendant. *Ibid.*

Although *Town of Chester* involved intervention under Rule 24, the principle on which it relied—that money judgments to different plaintiffs constitute different relief for purposes of Article III standing—has equal force with respect to class actions under Rule 23. After all, both class certification and intervention involve determining the propriety of adding new parties to the case. Cf. *Smith* v. *Bayer Corp.*, 564 U.S. 299, 313 (2011).

More generally, this Court has often applied to the class-action context the same principles of Article III standing that apply to other types of litigation. For instance, this Court's holdings that a named class representative must have Article III standing, see *O'Shea* v. *Littleton*, 414 U.S. 488, 494 (1974), and that the class representative cannot simply rely on the Article III standing of absent class members, see *Warth* v. *Seldin*, 422 U.S. 490, 502 (1975), reflect more general principles applicable outside the class context to any plaintiff who wishes to litigate claims on behalf of others. See, *e.g.*, *Sierra Club* v. *Morton*, 405 U.S. 727, 734-735 (1972); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 39-40 (1976). "That a suit may be a class action * * * adds nothing to the question of stand-

ing." *Simon*, 426 U.S. at 40 n.20; see *Town of Chester*, 581 U.S. at 439 ("Although the context is different, the rule is the same.").

That makes sense; Rule 23 is merely a procedural means of aggregating claims and so cannot trigger different substantive rules about Article III standing. Cf. 28 U.S.C. 2072(b) (explaining that procedural rules "shall not abridge, enlarge or modify any substantive right"). Accordingly, just as an intervenor who seeks his own money judgment must have Article III standing, each class member for whom a money judgment is sought likewise must have Article III standing. As this Court recently reiterated, "Article III does not give federal courts the power to order relief to *any* uninjured plaintiff, class action or not." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021) (emphasis added; citation omitted).

4. At the time of the Constitution's ratification, class actions would not have been brought on behalf of persons who lacked what we now call an Article III injury, which gives further reason to doubt that the "judicial Power of the United States," U.S. Const. Art. III, § 1, Cl. 1, extends to resolution of the claims of such class members, especially when those claims seek money damages. Cf. *TransUnion*, 594 U.S. at 424 ("As Madison explained in Philadelphia, federal courts instead decide only matters 'of a Judiciary Nature.'") (citation omitted).

As this Court has observed, "class suits were known before the adoption of our judicial system, and were in use in English chancery." *Supreme Tribe of Ben-Hur* v. *Cauble*, 255 U.S. 356, 366 (1921). Indeed, such suits date back to at least as early as the second year of Edward II's reign (July 1308 to July 1309), when Sir Otes

Grandison, lord of the Channel Islands, "without any notice * * * refused to give a discharge for any payments due to himself or to the Crown—such as rents or amercements—unless they were paid in the 'good money' of France instead of the 'feeble' money of the isles"—which had the effect of instantly tripling the islanders' debts. 30 *Selden Society* xxxv (1914). "Petition after petition went in to the King complaining bitterly of these things and asking for remedy and that right might be done." *Ibid.*

Addressing one such bill by a granger named Jordan Discart, the justices referred the matter to the King's Council and ordered that "all that are in like case with the present complainant are bidden to appear [a month after Michaelmas] before that same Council, either in person *or by some one representing them all*." 30 *Selden Society* 138 (emphasis added); see *id.* at xxxvii ("[T]he complainants were told that * * * a single complainant should argue the case for all."). In issuing that order, the justices might have taken inspiration from John the mason, Piers the mason, and a handful of other residents of "a tenement which is called Andrew's wharf and lyeth in the parish of St. Peter Port," who earlier that year had filed a bill complaining about a rent increase on behalf of "themselves *and their parceners*." *Id.* at 139 (emphasis added); see Raymond B. Marcin, *Searching for the Origin of the Class Action*, 23 Cath. U. L. Rev. 515, 521-523 (1974) (describing the episodes).

By the late seventeenth century, the bill of peace in equity had been well established as a means to avoid a multiplicity of suits. See Zechariah Chafee, Jr., *Some Problems of Equity* 200-201 (1950); Samuel L. Bray, *Multiple Chancellors*, 131 Harv. L. Rev. 417, 425-427 (2017). "For example, bills of peace would be brought

when a lord of the manor sought to appropriate some of the village common lands for his own purposes to the loss of the manorial tenants," or "when a vicar quarreled with his parishioners about tithes." Chafee 201 (citing, *inter alia*, *How* v. *Tenants of Bromsgrove*, (1681) 23 Eng. Rep. 277; 1 Vern. 22, and *Brown* v. *Vermuden*, (1676) 22 Eng. Rep. 796; 1 Ch. Cas. 272). In those cases, "each member of the multitude had the same interests at stake as every other member": "the multitude were interested in one piece of property, the tithe, the village common, or whatever it might be." *Ibid.* "The common questions were the only questions in these old bills of peace." Chafee 158. Indeed, they appeared to arise exclusively in manorial settings "to establish customs of the manor." Stephen C. Yeazell, *Group Litigation and Social Context*, 77 Colum. L. Rev. 866, 873 (1977).

By the time of the Founding or shortly thereafter, however, that limited manorial practice had been "liberalized." Chafee 214. A bill of peace could be used to resolve "important common questions" even in cases that also "presented independent questions" requiring individualized consideration. *Ibid.* (citing *Mayor of York* v. *Pilkington*, (1737) 26 Eng. Rep. 180; 1 Atk. 282); see Chafee 160-161. It also was established that a multitude could bring a bill of peace against a single defendant, so that (for instance) parishioners could sue the vicar, and not just the other way around. Chafee 158 (citing *Cockburn* v. *Thompson*, (1809) 33 Eng. Rep. 1005; 16 Ves. Jun. 321). Equity even permitted certain representative suits involving money claims. Chafee 285 (citing *Adair* v. *New River Co.*, (1805) 32 Eng. Rep. 1153; 11 Ves. Jun. 429); but see Yeazell 889-890 (disputing that contention). As Justice Story later explained, representative suits reflected exceptions to the "general rule

in equity" that all necessary parties had to be joined—such as when some members of an association appeared on behalf of the other members, or when joining all necessary parties would be impossible. *West* v. *Randall*, 29 F. Cas. 718, 721 (C.C.D.R.I. 1820) (Story, J.); see *id.* at 721-722. "From these roots, modern class action practice emerged." *Ortiz*, 527 U.S. at 833.

Yet it remained "a cardinal principle" that the absent "members must be interested in the subject matter of controversy *in the same way* as their representatives." Chafee 164 (emphasis added); see *Trump* v. *Hawaii*, 585 U.S. 667, 718 (2018) (Thomas, J., concurring) ("[T]hese 'proto-class actions' were limited to a small group of similarly situated plaintiffs having some right in common.") (brackets and citation omitted). Justice Story gave as examples "suits brought by a part of a crew of a privateer against prize agents for an account, and their proportion of prize money"; "creditors suing on behalf of the rest, and seeking an account of the estate of their deceased debtor, to obtain payment"; and "legatees seeking relief and an account against executors." *West*, 29 F. Cas. at 722-723.

Illustrating the degree of cohesiveness that was required, one lingering source of disagreement at the time appeared to be whether members of the multitude had to be in "privity" with the representative or could instead simply claim a common "general right." Chafee 166 (comparing *Dilly* v. *Doig*, (1794) 30 Eng. Rep. 738; 2 Ves. Jun. 486 (requiring privity), with *Mayor of York*, *supra* (no privity required)); see Chafee 162-163. If that was the ground of debate, it seems implausible that adjudicating a suit on behalf of absent persons who were not injured in the first place would have been viewed as a valid exercise of equitable jurisdiction. And because

federal courts' equitable authority generally is shaped by and limited to that in existence at the Founding, see *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-319 (1999), such suits would not be within courts' equity jurisdiction today.

B. A Rule 23(b)(3) Damages Class Should Not Be Certified If It Is Defined In A Manner That Includes Class Members Who Lack Article III Injuries

1. Consistent with the principles set forth above, this Court recently emphasized that "[e]very class member must have Article III standing in order to recover individual damages." *TransUnion*, 594 U.S. at 431. Even respondents have acknowledged that, "at the time the [class's] claims are resolved on the merits," "uninjured class members (if any) *must be excluded from a Rule 23(b)(3) class* and from receiving a share of a judgment for damages." Br. in Opp. 30 (emphasis added). It is thus clear that a court may not enter a monetary judgment in favor of a Rule 23(b)(3) class if some class members lack Article III injuries. The only remaining dispute, therefore, is about *when* class members must demonstrate that they share a common Article III injury. This Court has not yet formally addressed that "distinct question" of "whether every class member must demonstrate standing *before* a court certifies a class." *TransUnion*, 594 U.S. at 431 n.4.

That said, the Court has articulated two additional principles that point to the answer to that question. First, the Court has stated that "Rule 23 does not set forth a mere pleading standard"; instead, "[a] party seeking class certification must affirmatively demonstrate" that the Rule's requirements "are *in fact*" satisfied. *Wal-Mart*, 564 U.S. at 350. Second, the Court has stated that Article III standing must be established

"with the manner and degree of evidence required at the successive stages of the litigation." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Together, those principles strongly imply that an affirmative demonstration of all class members' Article III standing must be made before a class may be certified, and not deferred to some later point in the litigation. Given that every other issue that might bear on commonality, predominance, or the other Rule 23 prerequisites must be affirmatively demonstrated at the class-certification stage, it stands to reason that Article III standing must be shown at the same time. Cf. *Amchem*, 521 U.S. at 613 ("Rule 23's requirements must be interpreted in keeping with Article III constraints."). If anything, an affirmative demonstration of a common Article III injury across the class is all the more important given that it goes to the court's very power to hear the claims of all class members.

Requiring a demonstration of a common Article III injury across the class before a class is certified coheres with the principle that Article III standing is a threshold issue that courts ordinarily should address at the outset of a case. See *Steel Co.* v. *Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998). If, as has been established, class representatives must demonstrate that every class member has Article III standing to obtain monetary relief at the end of a case, there is no sound reason to dispense with that requirement at the time of certification; class representatives should make that showing to the same degree as other showings required by Rule 23. Indeed, in *Califano*, this Court appeared to presuppose that a court's having jurisdiction over each class member's individual claim was a *precondition* to class treatment: "Where the district court has

jurisdiction over the claim of each individual member of the class, Rule 23 provides a procedure by which the court may exercise that jurisdiction over the various individual claims in a single proceeding." 442 U.S. at 701; cf. *Weinberger* v. *Salfi*, 422 U.S. 749, 764 (1975) (claims of absent class members who did not satisfy jurisdictional prerequisites to suit should have been dismissed). So although a court may *reject* class certification without first having to address Article III standing, see *Ortiz*, 527 U.S. at 831, it should not actually certify a class and allow the proceedings to continue without also ensuring that the class is not defined to include members who lack Article III standing.

2. Considerations of practicality and fairness also support requiring class representatives to demonstrate that all members of the putative class have Article III standing at the certification stage. This Court has recognized the coercive effect of a class certification order, which—especially in a Rule 23(b)(3) damages class action—can create substantial pressure on a defendant to settle. See *Amgen*, 568 U.S. at 474. But a district court must approve any class settlement, see Fed. R. Civ. P. 23(e), which it cannot do unless it finds that each class member who would be awarded a payment under the settlement has Article III standing, see *TransUnion*, 594 U.S. at 431, 442. Given that class certification often is itself the trigger for settlement, it would be inappropriate and inefficient for a court to ignore problems with class members' Article III standing for purposes of certification, only to scrutinize standing carefully once presented with a proposed settlement. That is especially so when, as in *TransUnion* itself, a finding that a class-wide judgment cannot be entered because some class members lack Article III standing may require recon-

sideration of "whether class certification [wa]s appropriate" in the first place. *Id.* at 442; cf. *Frank* v. *Gaos*, 586 U.S. 485, 493 (2019) (per curiam)

To be clear, requiring plaintiffs to show that all class members share a common Article III injury at the certification stage does not require tracking down every class member to determine Article III standing on an individualized basis. Indeed, such an exercise would be contrary to the premise that the case is amenable to class treatment. Nor does it require each class member to prove his claim on the merits. Cf. *Warth*, 422 U.S. at 500; *Bell* v. *Hood*, 327 U.S. 678, 682 (1946). Instead, it simply means that a court should ensure that a class is certified only if it is "defined in such a way that anyone within it would have standing." *Denney* v. *Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006).

Conversely, if a class is defined in a way that *necessarily* includes members who lack Article III injuries, the class should not be certified. For example, if the class in *Amchem* had been defined to include not just those who had been exposed to the defendant's products, but those who were scared about possibly being exposed in the future, certification would have been inappropriate because on its face the class definition would have included those for whom potential future exposure was merely speculative and thus not sufficiently imminent to constitute an Article III injury. The modest requirement to avoid defining a class in a way that includes class members who lack any Article III injury is consistent with the longstanding principle that a class may not be certified unless all class members have suffered the same type of injury, see *Amchem*, *supra*.

That is not to say, of course, that a class may be defined by reference to the common Article III injury (or

any aspect of the merits). For example, a court could not modify the class definition in this case to include "all individuals whose ADA rights were violated by the inaccessibility of the LabCorp kiosks." Lower courts have rightly rejected such "fail-safe" classes "because 'a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment.'" *Mullins* v. *Direct Digital, LLC*, 795 F.3d 654, 660 (7th Cir. 2015) (citation omitted), cert. denied, 577 U.S. 1138 (2016); see *id.* at 659-660 (explaining that class definitions may not be overly vague, defined by subjective criteria, or defined in terms of the merits; and collecting cases). Such fail-safe classes are unfair to the defendant, potentially entail a waste of judicial resources, and undermine one of the main purposes of class actions, namely, to achieve finality for all cases involving similarly situated individuals.

C. Contrary Arguments Lack Merit

1. Respondents have argued that "the presence of uninjured members in a class does not render the case nonjusticiable" because the question "whether *all* members can demonstrate entitlement to relief" "may impact the Rule 23(b)(3) predominance determination" but "does not impact a court's authority to entertain the claims." Br. in Opp. 31. That argument rests on two separate but meritless contentions: first, that a federal court has authority to entertain a claim on behalf of a class as long as the class representative has Article III standing, regardless of whether any other class member has standing; and second, that the presence of class members without Article III standing is simply another factor to consider in evaluating predominance.

a. The first contention—that as long as the class representative has Article III standing, the dispute pre-

sents a proper case or controversy—admittedly has some surface appeal; outside the class-action context, this Court has stated that it will address the merits of a claim if a single plaintiff has Article III standing. *E.g.*, *Biden* v. *Nebraska*, 600 U.S. 477, 489 (2023) ("If at least one plaintiff has standing, the suit may proceed."); *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006); *Bowsher* v. *Synar*, 478 U.S. 714, 721 (1986).

But those non-class-action cases are inapposite because they did not involve plaintiffs who would be entitled to additional individual relief under the Court's judgment, as class members in a certified Rule 23(b)(3) damages action would be. Instead, the plaintiffs in those cases all sought the same equitable relief, such as an identical injunction or declaratory judgment. See Pet. Br. 27-29. When multiple plaintiffs have sought relief different from each other, this Court has insisted that each demonstrate Article III standing. That principle is especially clear where the relief sought is monetary, but it is no less true when plaintiffs seek equitable relief that is different in form or scope. See *Town of Chester*, 581 U.S. at 440 (approvingly citing the United States' position that a putative intervenor must demonstrate his own standing if he seeks "injunctive relief that is broader than or different from the relief sought by the original plaintiffs") (brackets and citation omitted).

Moreover, this Court's "expounding the law in the course of" addressing the claim of a plaintiff *with* Article III standing, *DaimlerChrysler*, 547 U.S. at 341, obviously does not itself violate Article III. And because this Court generally exercises purely discretionary jurisdiction (and often limits its review to discrete issues

within a case), its declining to address the standing of every single plaintiff before issuing an opinion on the merits—which will have nationwide precedential effect anyway—does not somehow convert that opinion into an advisory one. In contrast, a district court's entry of an order carrying both formal and practical coercive effects—as a class-certification order does, see *Smith*, 564 U.S. at 313; *Amgen*, 568 U.S. at 474—requires that each beneficiary of that order have Article III standing.

b. The second contention seems to be that although the presence of *too many* uninjured class members might well render the class unable to satisfy Rule 23(b)(3)'s predominance requirement, the presence of uninjured class members does not categorically mean that the class cannot be certified at all. Br. in Opp. 31.

That contention misapprehends the Rule 23 requirements. Predominance does not mean that the number of class members with Article III standing must predominate over (*i.e.*, be much greater than) the number of class members without standing; it means that questions common to the class must predominate over individualized questions. Fed. R. Civ. P. 23(b)(3). The first step in the inquiry is thus to identify the relevant common and individualized questions. As explained above, material variation in the type or existence of an Article III injury across the class generally means that the question of injury (and thus standing) is *not* common to the class. See *Wal-Mart*, 564 U.S. at 349-350 ("Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'") (citation omitted).

Putative class representatives in that circumstance must therefore identify some *other* question common to the class. And in a Rule 23(b)(3) class, that other ques-

tion additionally must predominate over the Article III question. In practice, those are all but impossible tasks given the paramount importance of Article III standing to a case—indeed, to the very power of the federal court to entertain the claims at all. Put differently, variation in satisfying Article III standing requirements of absent class members is the sort of "[d]issimilarit[y] within the proposed class" that would "impede the generation of common answers" that in turn could "drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350 (citation omitted); see *ibid.* ("What matters to class certification is not the raising of common 'questions'—even in droves—but, rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.") (citation and ellipsis omitted).

In *Wal-Mart*, for example, the variation in injuries across the class ineluctably meant that there were *no* meaningful common questions in the first place that would warrant class treatment. 564 U.S. at 359. That holding applies with at least the same force to cases in which the injury is of constitutional and jurisdictional significance. And in *Comcast*, the Court held that the plaintiffs' inability to prove damages on a classwide basis precluded a finding that common questions predominated over individualized ones. See 569 U.S. at 38. A class that includes members who lack Article III standing necessarily cannot prove damages on a classwide basis, since members who lack Article III standing would not be entitled to any damages at all. See *TransUnion*, 594 U.S. at 431, 442.

2. The First Circuit appears to have adopted a rule that a class may be certified as long as it contains only a *de minimis* number of uninjured members: "We do

not think the need for individual determinations or inquiry for a de minimis number of uninjured members at later stages of the litigation defeats class certification." *In re Nexium Antitrust Litigation*, 777 F.3d 9, 21 (2015). The court reasoned that because "the defendants will not pay, and the class members will not recover, amounts attributable to uninjured class members, and judgment will not be entered in favor of such members," "[a]t worst the inclusion of some uninjured class members is inefficient, but this is counterbalanced by the overall efficiency of the class action mechanism." *Id.* at 21-22.

The First Circuit's rule draws from the Latin maxim *de minimis non curat lex*; because the law does not concern itself with trifles, the theory goes, a trifling number of uninjured class members (in comparison to the whole) is legally equivalent to zero, and would not materially increase the pressure to settle. But this Court has made clear that "[e]very"—not "most," not "all but a *de minimis* number," but *every*—class member must have Article III standing to collect damages at the end of the case. *TransUnion*, 594 U.S. at 431. The same should be true at antecedent stages of the litigation, especially given that Article III standing is a threshold issue that goes to the court's very power to entertain each class member's claim.

In any event, the court of appeals in this case held "that Rule 23 permits 'certification of a class that potentially includes *more than* a de minim[i]s number of uninjured class members.'" Pet. App. 5a n.1 (emphasis added; citation omitted); see *Olean Wholesale Grocery Cooperative, Inc.* v. *Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir.) (en banc), cert. denied, 143 S. Ct. 424 (2022). That is improper even under the First Circuit's

reasoning in *Nexium*. Cf. *Olean*, 31 F.4th at 691-692 (Lee, J., dissenting).

D. This Court Should Remand For The Lower Courts To Reevaluate Class Certification

As noted, the court of appeals in this case simply applied circuit precedent holding that "Rule 23 permits 'certification of a class that potentially includes more than a de minim[i]s number of uninjured class members.'" Pet. App. 5a n.1 (citation omitted); see *Olean*, 31 F.4th at 669. Accordingly, this Court should vacate the judgment below and remand so that the lower courts can consider the propriety of class certification in the first instance. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

That course is particularly appropriate here because the parties appear to dispute whether the classes certified by the district court actually include any uninjured class members. Petitioners contend that the damages class, as defined, includes "any legally blind patient who merely happened to be *exposed* to a Labcorp kiosk in California, even if the patient had no intent of ever using one." Pet. Br. 43; see Pet. 8-9. But respondents have emphasized that the class definition includes only such patients "who, *due to their disability*, were unable to use the" kiosk. Pet. App. 63a (emphasis added). The italicized phrase could be read to include only patients whose disability, not choice, prevented them from successfully using the kiosks.

On remand, the lower courts can consider whether the current class definitions include any members who lack Article III injuries and, if so, whether the classes are redefinable to cure that infirmity. The United States

takes no position on those questions, which are best addressed by the lower courts in the first instance.

CONCLUSION

The judgment of the court of appeals should be vacated.

Respectfully submitted.

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