IN THE SUPREME COURT OF THE UNITED STATES

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No. 24-304

LABORATORY CORPORATION OF AMERICA HOLDINGS,
DBA LABCORP, PETITIONER

v.

LUKE DAVIS, ET AL.

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

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# MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting neither party. Petitioner has consented to this motion and agreed to cede ten minutes of its argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 20 minutes for petitioner, 10 minutes for the United States, and 30 minutes for respondents.

This case presents the question 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. The United States has filed a brief arguing that under this Court's precedents, a class should not be certified under Rule 23(b)(3) if it is defined in a manner that includes members who lack Article III injuries. The brief urges that the decision below be vacated for the lower courts to reconsider class certification, especially because it is unclear whether the classes in this case, as defined, actually include members who lack Article III injuries or, if they do, whether the classes are redefinable to cure that infirmity.

The United States has a substantial interest in the resolution of the question presented in this case. 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 Services 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).

The United States has previously presented oral argument as amicus curiae in cases raising similar Article III and Rule 23 issues. E.g., TransUnion LLC v. Ramirez, 594 U.S. 413 (2021); Frank v. Gaos, 586 U.S. 485 (2019) (per curiam); Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442 (2016); see also, e.g., Campbell-Ewald Co. v. Gomez, 577 U.S. 153 (2016). The participation of the United States in the oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

MARCH 2025