

No. 22-____

IN THE
Supreme Court of the United States

JANE DOE 8, *ET AL.*,
Petitioners,

v.

CHIQUITA BRANDS INTERNATIONAL, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *American Pipe & Construction Co. v. Utah*, this Court held that “a class action suspends the applicable statute [of limitations] as to all asserted members of the class.” 414 U.S. 538, 554 (1974). The Court explained that, without such a tolling rule, class members “would be induced” to file their own “protective” suits before the certification decision to keep the clock from running out on their claims in the interim, overwhelming the courts with “needless duplication,” thereby undermining Rule 23’s animating purpose. *Id.* at 553–554.

While all agree that a federal class action tolls the limitation period for federal-law claims, the circuits disagree whether the action also tolls the limitations period for non-federal claims. The question presented is:

Does *American Pipe* class action tolling apply to non-federal claims?

PARTIES TO THE PROCEEDING

Petitioners are 456 plaintiffs who proceeded under pseudonym in the district court and the court of appeals, but who have subsequently publicly disclosed their true names:

- Jane Doe 8 (Nelba Maria Berrio Ramirez)
- Jane Doe 9 (Raquel Victoria Sena De Leon)
- Jane Doe 10 (Celia Modesta Narvaez De Madrid)
- Jane Doe 11 (Elvira Miranda Estrada)
- Jane Doe 13 (Rubis Atencio Oquendo)
- Jane Doe 14 (Benilda Urango Carrascal)
- Jane Doe 16 (Vicenta Perea Reyes)
- Jane Doe 17 (Ana Rosmira de Hoyos Viola)
- Jane Doe 18 (Dilma Maria Molina Arevalo)
- Jane Doe 19 (Mariela Vasquez Marin)
- Jane Doe 20 (Edis Marina Diaz Espitia)
- Jane Doe 21 (Mary Luz Quinto Bonilla)
- Jane Doe 23 (Dioselina Arboleda De Rodriguez)
- Jane Doe 24 (Lilia Rosa De La Hoz Hurtado)
- Jane Doe 25 (Maria Lely Huila Bravo)
- Jane Doe 26 (Ligia Maria Rengifo Zapata)
- Jane Doe 27 (Martha Elvia Canas Hernandez)
- Jane Doe 28 (Blanca Rosa Cabria Martinez)
- Jane Doe 29 (Monica Alexandra Puentes Avalo)
- Jane Doe 30 (Anatividad Canas Hernandez)
- Jane Doe 32 (Soraida Rengifo Zapata)
- Jane Doe 33 (Maria De Jesus Garcia)

Jane Doe 34 (Maria Julieth Acosta Garcia)
Jane Doe 35 (Matilde Perez Medrano)
Jane Doe 36 (Maria Eduvina Osorio Ramirez)
Jane Doe 37 (Maria Isabel Tovar)
Jane Doe 38 (Mariluz Montoya Tovar)
Jane Doe 39 (Paula Andrea Montoya Tovar)
Jane Doe 40 (Marcela Negrete Soto)
Jane Doe 41 (Yasiris Johana Palencia Medrano)
Jane Doe 42 (Mirledis Celinda Palencia Negrete)
Jane Doe 43 (Yudis Patricia Palencia Negrete)
Jane Doe 44 (Gilda Barrios Negrete)
Jane Doe 227 (Urbina Janeth Palencia Negrete)
Jane Doe 45 (Gregoria Romana Olivera)
Jane Doe 46 (Petrona Alandete Duran)
Jane Doe 47 (Gloria Amparo Henao Alandete)
Jane Doe 48 (Nellys Carrascal Huertas)
Jane Doe 49 (Tarcila Esther Sanmartin Ruiz)
Jane Doe 50 (Angelica Maria Berrio Sanmartin)
Jane Doe 51 (Enorbita Berrio Sanmartin)
Jane Doe 52 (Teresa Berrio Sanmartin)
Jane Doe 53 (Ana Esther Berrio Sanmartin)
Jane Doe 54 (Carmela Del Carmen Berrio Sanmartin)
Jane Doe 55 (Maria Yulenis Palacio Mendoza)
Jane Doe 56 (Fanny Arias Martinez)
Jane Doe 57 (Yaqueline Arias Martinez)
Jane Doe 58 (Rosa Eva Arias Martinez)

- Jane Doe 59 (Rosa Angelica Parra Osorio)
Jane Doe 60 (Sandra Yaneth Hurtado Parra)
Jane Doe 61 (Maria Gladys Cano Ortiz)
Jane Doe 62 (Maria Magdalena Arbelaez)
Jane Doe 63 (Sandra Cano Arbelaez)
Jane Doe 64 (Maria Cielo Arbelaez)
Jane Doe 65 (Maria Fanny Holguin De Rincon)
Jane Doe 66 (Gloria Rincon Holguin)
Jane Doe 67 (Martha Cecilia Rincon Holguin)
Jane Doe 68 (Elcy Mery Pulgarin Echavarria)
Jane Doe 69 (Maria Eulalia Pulgarin Echavarria)
Jane Doe 75 (Gilma Cuesta)
Jane Doe 76 (Sonia Cuesta Diaz)
Jane Doe 77 (Maria Eugenia Ubaldo Cuesta)
Jane Doe 78 (Luz Elena Cuesta)
Jane Doe 79 (Francisca Perez Vidal)
Jane Doe 81 (Lisenia Lopez Perez)
Jane Doe 82 (Marlys Lopez Perez)
Jane Doe 83 (Deycis Norbellis Lopez Perez)
Jane Doe 84 (Ana Sirley Lopez Perez)
Jane Doe 85 (Dina Luz Lopez Perez)
Jane Doe 86 (Rosmira Del Socorro Garcia Perez)
Jane Doe 87 (Maria De Los Angeles Borja Garcia)
Jane Doe 88 (Yeny Maryory Borja Garcia)
Jane Doe 90 (Rosa Hilda Areiza)
Jane Doe 91 (Norfi Emilce Cardona Areiza)

Jane Doe 92 (Rosa Amelia Cardona Areiza)
Jane Doe 93 (Marta Oliva Florez Durango)
Jane Doe 94 (Olga Liliana Hernandez Giraldo)
Jane Doe 95 (Alexandra Maria Giraldo)
Jane Doe 97 (Maria De Los Angeles Cuvides Ramirez)
Jane Doe 98 (Maria Ofelia Miranda Usuga)
Jane Doe 99 (Yirley Johana Espitia Canas)
Jane Doe 101 (Luz Marina Manco Torres)
Jane Doe 102 (Beatriz Elena Aguirre Manco)
Jane Doe 103 (Matilde Vargas Urrego)
Jane Doe 104 (Luisa Fernanda Ospino Vargas)
Jane Doe 105 (Olivia Duran Jimenez)
Jane Doe 106 (Leidi Paola Ortiz Duran)
Jane Doe 109 (Maria Omaira Franco Vasquez)
Jane Doe 110 (Arely Yazmin Usuga Franco)
Jane Doe 111 (Luz Dalia Usuga Franco)
Jane Doe 112 (Gledys Omaira Usuga Franco)
Jane Doe 113 (Santa Delfa Rivas Martinez)
Jane Doe 114 (Ingris Patricia Murillo Rivas)
Jane Doe 115 (Ana Delfa Murillo Rivas)
Jane Doe 116 (Kelly Jhoanna Mena Mosquera)
Jane Doe 117 (Paola Andrea Mena Mosquera)
Jane Doe 118 (Claudia Esther Mena Mosquera)
Jane Doe 119 (Maria Elva Correa Rodriguez)
Jane Doe 120 (Gloria Patricia Arroyave Correa)
Jane Doe 121 (Yorledy Gomez Canas)

Jane Doe 122 (Maria Luzcelia Canas Hernandez)
Jane Doe 123 (Luz Mary Hernandez Correa)
Jane Doe 124 (Annalit Arroyave Salas)
Jane Doe 125 (Flor Elena Echavarria Osorio)
Jane Doe 126 (Sielva Rosa Socarras Gaspar)
Jane Doe 127 (Lorena Ceren Socarras)
Jane Doe 128 (Bernardina Morelo De Ceren)
Jane Doe 129 (Inocencia Ceren Morelo)
Jane Doe 130 (Georgina Ceren De Lopez)
Jane Doe 131 (Grisedia Maria Ceren Morelo)
Jane Doe 132 (Bernardina Ceren Morelo)
Jane Doe 133 (Eleida Ceren Morelo)
Jane Doe 134 (Emelina Ceren Morelo)
Jane Doe 135 (Candelaria Ceren Morelo)
Jane Doe 136 (Sol Angel Rengifo Palacios)
Jane Doe 137 (Sandra Milena Murillo Rengifo)
Jane Doe 138 (Maria Yajaira Murillo Rivas)
Jane Doe 139 (Maria Dionis Florez Jaramillo)
Jane Doe 140 (Melany Alejandra Vasquez Florez)
Jane Doe 141 (Alba Rocio Hernandez Correa)
Jane Doe 142 (Luz Marllore Hernandez Correa)
Jane Doe 143 (Maria Enelida Ramos)
Jane Doe 144 (Diana Maricela Oviedo Ramos)
Jane Doe 145 (Maria Graciela Borja)
Jane Doe 146 (Elizabeth Johana Jimenez Borja)
Jane Doe 147 (Luz Mila Pacheco)

Jane Doe 148 (Ada Luz Teheran)
Jane Doe 149 (Maria Rosaura Ortiz Molina)
Jane Doe 150 (Juana Gomez Castro)
Jane Doe 151 (Maria Roselia Canas Ramirez)
Jane Doe 156 (Eufemia Maria Hernandez)
Jane Doe 157 (Nelly Orfelia Quintero)
Jane Doe 158 (Sonia Palacio Renteria)
Jane Doe 159 (Margoth Vargas Benitez)
Jane Doe 161 (Emilse Fonseca Perea)
Jane Doe 162 (Flor Aleida Ciro Castano)
Jane Doe 163 (Gloria Helena Lara Palacio)
Jane Doe 165 (Luz Eneida Manco Meneses)
Jane Doe 166 (Edilma De Jesus Flores Plaza)
Jane Doe 167 (Crister Lourdes Ortega Julio)
Jane Doe 168 (Maria Trinidad Ortiz)
Jane Doe 170 (Maria Candelaria Torres Urango)
Jane Doe 171 (Eusmed Rengifo Alvarez)
Jane Doe 172 (Martha Cecilia Causil Ortiz)
Jane Doe 173 (Carmen Alicia Arcos Martinez)
Jane Doe 174 (Luz Dary Usuga Celada)
Jane Doe 177 (Rubia Maria Leudo)
Jane Doe 178 (Yamile Florez Julio)
Jane Doe 179 (Hipolita Borja Padilla)
Jane Doe 180 (Fabiola Monsalve Oquendo)
Jane Doe 181 (Emilce Durango Guerra)
Jane Doe 182 (Maria Eugenia Suaza)

- Jane Doe 183 (Luz Marina Urrego Usuga)
Jane Doe 184 (Dilia Isabel Gonzalez Hernandez)
Jane Doe 185 (Maria Magdalena Guerra)
Jane Doe 186 (Luz Alba Flores Jaramillo)
Jane Doe 187 (Ledys Santero Hernandez)
Jane Doe 188 (Mercedes Rodriguez De Taborda)
Jane Doe 189 (Martha Helena Benitez)
Jane Doe 190 (Lilian Melania Ramirez Perea)
Jane Doe 191 (Naydu Gallego Osorno)
Jane Doe 192 (Martha Oliva Varelas)
Jane Doe 193 (Blanca Diaz Pastrana)
Jane Doe 194 (Flor Marina Montoya Borja)
Jane Doe 196 (Yuliana Monsalve Loaiza)
Jane Doe 197 (Maria Luzmila Ortiz)
Jane Doe 198 (Cristina Maria Valencia Berrio)
Jane Doe 199 (Sixta Cledys Pereira Martinez)
Jane Doe 200 (Diana Patricia Velasquez)
Jane Doe 201 (Luz Mery Cuesta Florez)
Jane Doe 202 (Gloria Maria Caro)
Jane Doe 203 (Luz Dary Cardona Franco)
Jane Doe 204 (Beatriz Elena Mestra Gonzalez)
Jane Doe 206 (Carlina Rosa Arroyo Plata)
Jane Doe 207 (Bertha Beatriz Vargas Vasquez)
Jane Doe 209 (Martha Isabel Romana)
Jane Doe 210 (Deisa Zarza Carrascal)
Jane Doe 213 (Ruth Maria Ramirez de Berrio)

Jane Doe 214 (Claribel Berrio Ramirez)

Jane Doe 215 (Sandra Berrio Ramirez)

Jane Doe 217 (Gloria Cristina Hernandez
Hernandez)

Jane Doe 218 (Beatriz Elena Hernandez
Hernandez)

Jane Doe 219 (Claudia Milena Hernandez
Hernandez)

Jane Doe 220 (Margarita Rosa Hernandez
Hernandez)

Jane Doe 221 (Fabiola Del Socorro Serna de
Lemus)

Jane Doe 223 (Yaney Gisela Aguirre Manco)

Jane Doe 224 (Maria Edit Lopez Montoya)

Jane Doe 225 (Eddy Osorio Lopez)

Jane Doe 226 (Sandra Milena Osorio Lopez)

Jane Doe 228 (Hipolita Hernandez Huertas)

Jane Doe 230 (Rosalia Osorio Viuda De
Echavarria)

Jane Doe 231 (Eneida Ceren Morelo)

Jane Doe 232 (Matilde Martinez Ceren)

Jane Doe 233 (Blanca Rosa Jimenez David)

Jane Doe 234 (Liliana Jimenez Borja)

Jane Doe 235 (Leonela Jimenez David)

Jane Doe 236 (Luz Miriam Taborda Rodriguez)

Jane Doe 237 (Gloria Patricia Marin)

Jane Doe 238 (Rosiris del Carmen Morales
Miranda)

Jane Doe 239 (Ana De Jesus Meneses
Bustamante)

Jane Doe 240 (Yenis Del Rosario Reyes Gonzalez)

Jane Doe 241 (Gladys Gallego)

Jane Doe 242 (Maria Marlene Arias Estrada)

Jane Doe 243 (Maria Patricia Gomez Montoya)

Jane Doe 244 (Yaneth Amparo Moreno Gomez)

Jane Doe 245 (Ligia De Jesus Valencia)

Jane Doe 246 (Emilia Mosquera)

Jane Doe 247 (Luz Areli Laverde)

Jane Doe 248 (Marta Cecilia Vargas Patino)

Jane Doe 249 (Dilma Esther Rivero)

Jane Doe 250 (Martha Yolanda Echeverri)

Jane Doe 251 (Martha Irene Pena Acuna)

Jane Doe 252 (Carmen Yadira Blandon
Mosquera)

Jane Doe 253 (Claudia Patricia Munoz Osorio)

Jane Doe 254 (Bertha Tulia Bravo)

Jane Doe 255 (Julia Stella Areiza Jaramillo)

Jane Doe 256 (Dora Alba Perez Giraldo)

Jane Doe 257 (Angela Maria Avila Jimenez)

Jane Doe 258 (Edelmira Leudo Asprilla)

Jane Doe 259 (Gumerinda Gaviria Bolano)

Jane Doe 260 (Aida Isabel Cogollo)

Jane Doe 261 (Ameira Restrepo Torres)

Jane Doe 262 (Marta Elena Restrepo)

Jane Doe 263 (Ana De Jesus Mosquera de Palacios)

Jane Doe 264 (Maria La Luz Sosa Sosa)

Jane Doe 265 (Luz Gladys Higueta Caro)

Jane Doe 266 (Margarita Del Carmen Beltran Cruz)

Jane Doe 267 (Gloria Emilsen Higueta)

Jane Doe 269 (Rosa Elena Goetz Rueda)

Jane Doe 270 (Edith Esther Anaya Jaramillo)

Jane Doe 271 (Emilse Tapias)

Jane Doe 272 (Leonor Silgado)

Jane Doe 274 (Maria Del Carmen Osorio)

Jane Doe 275 (Luz Dary Guerra)

Jane Doe 276 (Nohora Del Carmen Herrera Altamiranda)

Jane Doe 277 (Esther Maria Coa Licon)

Jane Doe 278 (Fermina Licon Guerra)

Jane Doe 279 (Monica Patricia Monterrosa Ramos)

Jane Doe 280 (Leisy Patricia Urango Monterrosa)

Jane Doe 281 (Leidy Patricia Urango Monterrosa)

Jane Doe 282 (Elvira Urango Valencia)

Jane Doe 283 (Miguelina Cordoba Moya)

Jane Doe 284 (Luisa Moreno Cordoba)

Jane Doe 285 (Merys Maria Moreno Cordoba)

Jane Doe 286 (Rosa Francisca Moreno Cordoba)

- Jane Doe 287 (Elvia Maria Ramirez Yanez)
Jane Doe 288 (Nancy Maria Moreno Romana)
Jane Doe 289 (Astrid Chaverra Moreno)
Jane Doe 290 (Alba Maria Rojas Gutierrez)
Jane Doe 291 (Carmen Jael Rojas Gutierrez)
Jane Doe 292 (Eunice Rojas Gutierrez)
Jane Doe 293 (Glenis San Martin Galan)
Jane Doe 294 (Catalina San Martin Galan)
Jane Doe 295 (Marilis San Martin Galan)
Jane Doe 296 (Maria Esneida Marquez)
Jane Doe 297 (Liliana Garcia Marquez)
Jane Doe 298 (Paula Andrea Garcia Marquez)
Jane Doe 299 (Debora Maria Ruiz Gonzalez)
Jane Doe 300 (Beatriz Elena Castano Ruiz)
Jane Doe 301 (Mariela Castano Ruiz)
Jane Doe 302 (Luz Angela Castano Ruiz)
Jane Doe 303 (Zulbiana Benitez Franco)
Jane Doe 304 (Aracely Del Carmen Ramirez)
Jane Doe 305 (Nini Johana Vanegas Ramirez)
Jane Doe 306 (Aida Sofia Tordecilla Gomez)
Jane Doe 307 (Vinicio de los Torres Gonzalez Padilla)
Jane Doe 308 (Maria De Las Mercedes Munoz Garcia)
Jane Doe 309 (Lina Beatriz Sanchez Munoz)
Jane Doe 310 (Josefina Gonzalez Rivas)
Jane Doe 311 (Odilia Hernandez Gonzalez)

- Jane Doe 312 (Neudis Hernandez Gonzalez)
Jane Doe 313 (Maria del Socorro Hernandez Gonzalez)
Jane Doe 314 (Denis Margarita Carrillo Gonzalez)
Jane Doe 315 (Ana Maria Roldan de Rodriguez)
Jane Doe 316 (Ana Teresita Roldan Guisao)
Jane Doe 317 (Rosa Franquilina Hurtado Garcia)
Jane Doe 318 (Janeth Higueta Hurtado)
Jane Doe 319 (Mariela Alvarez Ospina)
Jane Doe 320 (Maria Esperanza Ferraro Alvarez)
Jane Doe 321 (Nidia de Jesus Ferraro Alvarez)
Jane Doe 322 (Maria Eudilma Ferraro Alvarez)
Jane Doe 323 (Maria Norbely Otagri)
Jane Doe 324 (Erika Andrea Berrio Otagri)
Jane Doe 325 (Luz Elena Berrio Otagri)
Jane Doe 326 (Maria Arcenia Diaz de Ruiz)
Jane Doe 327 (Alexandra Bibiana Acevedo Florez)
Jane Doe 328 (Myriam de Jesus Ruiz Diaz)
Jane Doe 329 (Nancy Islena de Jesus Ruiz Diaz)
Jane Doe 330 (Josefina de Jesus Ruiz Diaz)
Jane Doe 331 (Bella Zulima Ruiz Diaz)
Jane Doe 332 (Senobia Ruiz Diaz)
Jane Doe 333 (Rubiela de Jesus Ruiz Diaz)
Jane Doe 334 (Maria Alciria de Jesus Ruiz Diaz)
Jane Doe 335 (Dilia Maria Caicedo Valoyes)

- Jane Doe 336 (Maria Sandra Gamboa Caicedo)
Jane Doe 337 (Disney Gamboa Caicedo)
Jane Doe 338 (Kervis Edith Gamboa Caicedo)
Jane Doe 339 (Rosa Emilia Tangarife Tangarife)
Jane Doe 340 (Lucia De Jesus Tangarife
Tangarife)
Jane Doe 341 (Tatiana Tangarife Jaramillo)
Jane Doe 342 (Patricia Tangarife Tangarife)
Jane Doe 343 (Luz Dary Del Socorro Cuartas
Diez)
Jane Doe 344 (Blanca Rubiela Cuartas Diez)
Jane Doe 345 (Aracely De Jesus Cuartas Diez)
Jane Doe 346 (Ana Solina Diez)
Jane Doe 347 (Maria Fabiola Rengifo De Caro)
Jane Doe 348 (Maria Cenelia Loaiza Tapasco)
Jane Doe 349 (Omaira Durango Gallo)
Jane Doe 350 (Catalina Durango Ayala)
Jane Doe 351 (Ana Gilma Caro Rengifo)
Jane Doe 352 (Clara Ines Caro Rengifo)
Jane Doe 353 (Diana Patricia Caro Rengifo)
Jane Doe 354 (Luz Alba Espinosa)
Jane Doe 355 (Marlen Cecilia Jimenez Espinosa)
Jane Doe 356 (Denis Maria Rengifo Borja)
Jane Doe 357 (Faridey Gonzalez Rengifo)
Jane Doe 358 (Rosalba Marin de Gonzalez)
Jane Doe 359 (Rosalba Gonzalez Marin)
Jane Doe 360 (Migdonia Gonzalez Marin)

Jane Doe 361 (Bertha Luz Martinez Martinez)
Jane Doe 362 (Liliana Isabel Vargas Martinez)
Jane Doe 363 (Julieth Andrea Galeano
Castellanos)
John Doe 23 (Reinerio De Jesus Canas
Hernandez)
John Doe 32 (Ever Carlos Rengifo Zapata)
John Doe 33 (Policarpo Molina Vasquez)
John Doe 35 (Robinson Antonio Negrete Cantero)
John Doe 37 (Fabian Rengifo Zapata)
John Doe 39 (Adrian De Jesus Bedoya
Castaneda)
John Doe 40 (Juan Bautista Zapata)
John Doe 48 (Ruben Dario Garcia)
John Doe 49 (Jose Mauricio Garcia)
John Doe 50 (Pedro Dubian Garcia)
John Doe 54 (Juan Manuel Montoya Tovar)
John Doe 56 (Oswuin Farley Palencia Medrano)
John Doe 57 (Francisco Palencia Negrete)
John Doe 60 (Juan Pablo Lopez Fernandez)
John Doe 62 (Juan Guillermo Henao Alandete)
John Doe 63 (Julio Cesar Henao Alandete)
John Doe 65 (Juan Antonio Carrascal Huertas)
John Doe 66 (Tomas Berrio Jimenez)
John Doe 70 (Jambrinson Arias Martinez)
John Doe 71 (Luis Alfonso Hurtado Parra)
John Doe 73 (Leonidas De Jesus Cano Ortiz)

John Doe 74 (Yovany De Jesus Cano Arbelaez)
John Doe 75 (Johan Alexis Cano Trejos)
John Doe 84 (Juan Pablo Borja Garcia)
John Doe 88 (Jose Leonel Cardona Gutierrez)
John Doe 90 (Jose Leonel Cardona Areiza)
John Doe 93 (Carlos Giraldo)
John Doe 94 (Luis Antonio Cubides Ramirez)
John Doe 96 (Jose Dagoberto Miranda Usuga)
John Doe 97 (Juan Diego Miranda Usuga)
John Doe 99 (Danny Mauricio Aguirre Manco)
John Doe 100 (Jhon Fredy Aguirre Manco)
John Doe 101 (Elkin De Jesus Aguirre Manco)
John Doe 102 (Luis Carlos Ospino Vargas)
John Doe 108 (Wilber Hernando Usuga Franco)
John Doe 110 (Luis Felipe Murillo Rivas)
John Doe 111 (Jose Patrocinio Murillo Rivas)
John Doe 112 (Johan Alexander Murillo Asprilla)
John Doe 114 (Omar De Jesus Hernandez)
John Doe 116 (Luis Emilio Hernandez Correa)
John Doe 117 (Ovidio De Jesus Arroyave Correa)
John Doe 118 (Jeferson Andres Arroyave Salas)
John Doe 119 (Henderson Patrick Arroyave
Marimon)
John Doe 123 (Alisandro Candelaria Ceren
Morelo)
John Doe 124 (Manuel Tiberio Ceren Morelo)
John Doe 126 (Jose Enrique Murillo Rengifo)

John Doe 127 (Jefferson Murillo Rengifo)
John Doe 128 (Jhon Alex Murillo Rengifo)
John Doe 129 (Jair Emir Murillo Rengifo)
John Doe 130 (Yoiner Alexander Murillo Rengifo)
John Doe 132 (Oscar Dario Vasquez Gonzalez)
John Doe 134 (Hector Jose Oviedo Ramos)
John Doe 135 (Arley Fernando Oviedo Ramos)
John Doe 136 (Edinson Bautista Oviedo Ramos)
John Doe 139 (Antonio Jimenez Parra)
John Doe 144 (Wilinton Avila Lopez)
John Doe 145 (Yordano Tabares Cortez)
John Doe 162 (Jose Eliecer Renteria Murillo)
John Doe 211 (Albeiro Berrio Ramirez)
John Doe 212 (Arley de Jesus Berrio Ramirez)
John Doe 213 (Jhon James Berrio Ramirez)
John Doe 214 (Juan Carlos Berrio Ramirez)
John Doe 215 (Eusebio Berrio Ramirez)
John Doe 216 (Herlan Osorio Lopez)
John Doe 219 (Carlos Andres Arias Cordoba)
John Doe 222 (Orley Humberto Lopez Perez)
John Doe 224 (Andres David Espitia Echavarria)
John Doe 225 (Elkin Alfonso Echavarria Osorio)
John Doe 226 (Eriberto Ceren Morelos)
John Doe 227 (Jose Isabel Ceren Morelo)
John Doe 228 (Leider Ceren Gonzalez)
John Doe 229 (Candelario Ceren Santana)

John Doe 230 (Andres Jimenez Borja)
John Doe 233 (Jhonny Andres Agudelo Vargas)
John Doe 258 (Jorge Eliecer Restrepo)
John Doe 262 (German Castaneda Montes)
John Doe 270 (Luis Antonio Guisao)
John Doe 273 (Ivan Antonio Orozco Velez)
John Doe 275 (Alirio Jose Perez Hoyos)
John Doe 278 (Libardo Cedeno Cuadrado)
John Doe 284 (Jeinne De Jesus Gomez Zapata)
John Doe 288 (James De Jesus Urango
Monterrosa)
John Doe 289 (Jader Andres Urango Monterrosa)
John Doe 291 (Luis Angel Moreno Cordoba)
John Doe 292 (Santos Moreno Cordoba)
John Doe 293 (Guillermo Moreno Cordoba)
John Doe 296 (Adan Chaverra Salas)
John Doe 297 (Adalberto Chaverra Moreno)
John Doe 298 (Alexis De Jesus Chaverra
Moreno)
John Doe 299 (Alexander Chaverra Moreno)
John Doe 300 (Anderson Chaverra Moreno)
John Doe 302 (Jorge Enrique Rojas Gutierrez)
John Doe 304 (Neider San Martin Guerra)
John Doe 306 (Edison Antonio Gracia Marquez)
John Doe 308 (Adolfo De Jesus Castano Osorio)
John Doe 309 (Gabriel Amado Castano Ruiz)
John Doe 310 (Marco Fidel Castano Ruiz)

John Doe 312 (Landisabal Benitez Franco)
John Doe 314 (Oscar Hernando Vanegas Henao)
John Doe 315 (Oscar Giovanni Vanegas Ramirez)
John Doe 316 (Carlos Mario Vanegas Ramirez)
John Doe 319 (Gonzalo Gilberto Sanchez)
John Doe 320 (Juan Manuel Sanchez)
John Doe 323 (Neir Hernandez Gonzalez)
John Doe 325 (Carlos Enrique Roldan Guisao)
John Doe 326 (William de Jesus Roldan Guisao)
John Doe 327 (Leonel Roldan Guisao)
John Doe 329 (Gilberto Higueta Hurtado)
John Doe 330 (Gabiél Jaime Higueta Hurtado)
John Doe 332 (Nilson Lambertino Ferraro)
John Doe 334 (Carlos Alberto Berrio Otagri)
John Doe 336 (Johan Arley Ruiz Acevedo)
John Doe 337 (William Whiton Ruiz Diaz)
John Doe 338 (Henry de Jesus Ruiz Diaz)
John Doe 339 (Gabriel Angel Ruiz Diaz)
John Doe 341 (Alexander Gamboa Caicedo)
John Doe 342 (Milton Gamboa Caicedo)
John Doe 343 (Carlos Andres Gamboa Caicedo)
John Doe 345 (Francisco Jose Tangarife)
John Doe 347 (Rogelio Antonio Sanchez Diez)
John Doe 348 (Jorge Ivan Sanchez Diez)
John Doe 350 (Reinaldo Antonio Durango Guisao)

John Doe 351 (Hermes De Jesus Durango Rengifo)

John Doe 353 (Marco Fidel Jimenez Espinosa)

John Doe 354 (Gonzalo Jimenez Espinosa)

John Doe 356 (Cristian Ferney Gonzalez Espitia)

John Doe 357 (Miguel Estiven Gonzalez Rengifo)

John Doe 358 (Eduardo Fredy Gonzalez Marin)

John Doe 359 (Abdon de Jesus Gonzalez Marin)

John Doe 360 (Jorge Asdrubal Gonzalez Marin)

John Doe 362 (Jeison Dario Agudelo Urango)

John Doe 363 (Edinson Giovany Vargas Martinez)

John Doe 364 (Wilson R. Vargas Martinez)

John Doe 365 (John Humberto Vargas Martinez)

Respondent is Chiquita Brands International, Inc., a New Jersey corporation.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioners declare as follows: No petitioner is a corporation. Counsel EarthRights International is a non-profit corporation with no parent corporation or stock.

RELATED PROCEEDINGS

Proceedings directly on review:

Garcia v. Chiquita Brands Int'l Inc., No. 21-10211 (11th Cir. Sept. 8, 2022)

In re: Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig., No. 08-md-01916-KAM (S.D. Fla. Sept. 30, 2020), a ruling in one

individual case, No. 20-cv-60831, in a multi-district litigation.

The class action against Chiquita, *Doe v. Chiquita Brands Int'l, Inc.*, was originally filed in the District of New Jersey as No. 07-cv-03406, transferred to the *Chiquita* MDL, and assigned case No. 08-cv-80421 in the Southern District of Florida. That case gave rise to the following related proceedings:

Cardona v. Chiquita Brands Int'l, Inc., No. 12-14898
(11th Cir. July 24, 2014)

Carrizosa v. Chiquita Brands Int'l, Inc., No. 19-11494
(11th Cir. July 16, 2020)

Carrizosa v. Chiquita Brands Int'l, Inc., No. 19-13926
(11th Cir. Sept. 6, 2022)

In re: Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig., No. 22-10261-AA (11th Cir. Nov. 22, 2022)

Additional related cases in the *In re: Chiquita* multi-district litigation, No. 08-md-01916-KAM (S.D. Fla.):

No. 07-cv-60821

No. 08-cv-80465

No. 08-cv-80480

No. 08-cv-80508

No. 10-cv-60573

No. 10-cv-80652

No. 11-cv-80404

No. 11-cv-80405
No. 13-cv-80146
No. 17-cv-60560
No. 17-cv-80323
No. 17-cv-80475
No. 17-cv-80535
No. 17-cv-80547
No. 17-cv-81285
No. 18-cv-80248
No. 18-cv-80800
No. 20-cv-82222
No. 21-cv-60058

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Jane Doe 8, *et al.*, respectfully petition this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–37a) is reported at 48 F.4th 1202. The opinion of the district court (Pet. App. 38a–65a) is unreported but available at 2020 WL 7388944.

JURISDICTION

The judgment of the court of appeals was entered on September 8, 2022. Pet. App. 1a. The court denied a timely petition for rehearing and rehearing en banc on November 14, 2022. Pet. App. 67a. On February 3, 2023, Justice Thomas extended the time for filing this petition through March 14, 2023. No. 22A700. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Federal Rule of Civil Procedure 23 provides in relevant part:

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

INTRODUCTION

In *American Pipe*, this Court established that a “class action suspends the applicable statute of limitations as to all asserted members” of the class until a certification decision is reached. 414 U.S. at 554. Any other rule would “frustrate the principal function” of Rule 23 and “deprive” this system of its efficiency. *Id.* at 551, 553. This tolling rule solves a practical problem that faces putative class members and the federal courts that administer class actions. Because it is difficult to successfully predict whether a class will be certified, and because the limitations period will often lapse before certification is decided, many class members will flee the class and file individual claims before the limitation period runs, rather than risk losing their claims. Tolling protects federal courts from this flood of potentially needless “protective” filings. *Id.* at 553–554. Without it, “the principal purposes of the class-action procedure . . . would thereby be frustrated.” *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 349 (1983).

The question in this case is whether the tolling rule of *American Pipe* applies to all claims asserted in a putative class action, or only to federal claims. The circuits have split three ways on the question, leading to divergent outcomes for similarly situated putative class members. Both the existence of this entrenched circuit split and the rule adopted below – applying a case-by-case balancing test – are untenable for litigants and unworkable for courts, since any uncertainty over tolling rules induces exactly the “multiplicity of activity which Rule 23 was designed to avoid.” *American Pipe*, 414 U.S. at 551. The Court should grant certiorari to clarify that the federal interests underlying *American Pipe* require a uniform federal class action tolling rule for all claims.

STATEMENT OF THE CASE

I. Legal Background

“A federal class action is . . . a truly representative suit designed to avoid, rather than encourage, unnecessary filing of repetitious papers and motions.” *American Pipe*, 414 U.S. at 550. It is not merely an “invitation to joinder.” *Id.* Thus, if a federal class action is certified, all class members are entitled to recover and are bound by the judgment whether they have filed a claim or not. And this is so even in federal class actions involving state law claims where state law prohibits class treatment. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 416 (2010).

At the outset, however, potential class members have no way to know whether they will ultimately be part of a certified class. If the statute of limitations

runs before certification — a common situation, given that a certification decision often requires discovery, can take years, and is always provisional¹ — class members could lose their claims if class certification is denied or later revoked. Thus, they have every incentive to file protective individual actions before the limitations period runs. But that would defeat one of the principal purposes of the class action system, which is avoid the cost and burden of the courts having to adjudicate dozens, sometimes hundreds, of similar claims.

This Court confronted exactly this problem in *American Pipe*. The plaintiffs filed a Sherman Act suit, purporting to represent a class under Rule 23. More than a year later, the district court denied certification. Members of the rejected class then moved to intervene. The court denied the motion, concluding that the statute of limitations had run while the certification motion was pending. 414 U.S. at 542–43.

This Court reversed, “convinced that the rule most consistent with federal class action procedure must be that the commencement of a class action suspends the applicable statute of limitations as to all asserted

¹ See Fed. R. Proc. 23(c)(1)(C) (providing that class certification “may be altered or amended before final judgment”); see also, e.g., Fed. R. Civ. P. 23(f) (permitting interlocutory appeals of class certification orders); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011) (ordering decertification of class seven years after class was initially certified).

members of the class.”² *Id.* at 554. Without tolling, the Court explained, “[p]otential class members would be induced to file protective” claims, which “would breed needless duplication” and thereby “deprive Rule 23 class actions of the efficiency and economy of litigation which is a principal purpose of the procedure.” *Id.* at 553–54.

The Court emphasized that its tolling rule was “in no way inconsistent with the functional operation of a statute of limitations.” *Id.* at 554. Such statutes seek to “prevent[] surprises” and “put the adversary on notice,” but class tolling satisfies these “policies of ensuring essential fairness to defendants,” since even an unsuccessful class action “commences a suit and thereby notifies the defendants” of the claims as well as the “the number and generic identities” of potential plaintiffs. *Id.* at 554–55.

The Court has since reiterated that *American Pipe* “asserts a federal interest in assuring the efficiency and economy of the class-action procedure” — an interest that can only be “fully protected” by tolling the statute of limitations while a federal court considers class certification. *Chardon v. Fumero Santo*, 462 U.S. 650, 661 (1983).

But class tolling does more than make class actions more efficient and administrable for federal judges. Much of class action procedure depends on

² While *American Pipe* applied a federal tolling rule when uncertified class members subsequently sought to *intervene*, the Court has clarified that, under the same logic, the same federal tolling rule extends to those who file separate follow-on actions. See *Crown*, 462 U.S. at 351.

tolling. The constitutionally mandated opt-out rights in Rule 23(b)(3) classes are only “meaningful” if there is tolling. *Crown*, 462 U.S. at 351–52. And the separate individual filings that will come without tolling are anathema to Rule 23(b)(1), which requires mandatory class treatment *because* individual proceedings might prejudice the interests of other class members or lead to inconsistent obligations for defendants.

II. Factual and Procedural Background

The Autodefensas Unidas de Colombia (AUC) was a terrorist group that killed thousands of civilians throughout the 1990s and 2000s. In 2007, Chiquita Brands International – the major worldwide banana distributor – pled guilty to the federal crime of transacting with this U.S.-designated terrorist organization and paid a \$25 million fine. In its plea, Chiquita admitted to paying the AUC almost monthly from 1997 through 2004, even after Chiquita’s outside counsel advised, “Bottom line: CANNOT MAKE THE PAYMENT.” DE 575 at 2147.

A. The Original Class Action

Four months after Chiquita’s guilty plea revealed its involvement, relatives of AUC victims filed a Rule 23 class action in the District of New Jersey (where Chiquita was incorporated) pleading claims under federal law – the Alien Tort Statute (ATS) and Torture Victim Protection Act (TVPA) – as well as under New Jersey and Colombian tort law. They sought class certification under Rule 23(b)(3), because common issues predominated, and under Rule 23(b)(1)(B), because Chiquita’s limited assets meant case-by-case

adjudication could impede other class members' interests.

Hundreds of other victims filed individual actions as well. In February 2008, the Judicial Panel on Multidistrict Litigation (JPML) transferred all of these cases to the Southern District of Florida.

Over the next eight years, class certification proceedings were deferred as the court considered (and Chiquita appealed) a series of dispositive threshold motions. Chiquita first moved to dismiss in 2008. The district court denied the motion in part, granted it in part, and certified an interlocutory appeal. While the appeal was pending, this Court decided *Mohamad v. Palestinian Authority*, 566 U.S. 449 (2012) and *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), leading to dismissal of the federal ATS and TVPA claims. *Cardona v. Chiquita Brands Int'l*, 760 F.3d 1185, 1189 (11th Cir. 2014). The Colombian law claims, however, went forward.

In 2015, after remand, Chiquita moved to dismiss again, this time for *forum non conveniens*. The court denied the motion, finding that Colombia was inadequate “in light of the significant possibility of harm likely to attend the litigation” there. DE 1194 at 11.

After the *forum non conveniens* motion was denied at the end of 2016, the district court lifted the stay on discovery that had been in place since 2008. Discovery, needed in part to address questions of class certification, proceeded until 2018.

In March 2017 — shortly before the ten-year statute of limitations under Colombian law was set to

expire, under the district court's prior rulings — the plaintiffs moved to add several hundred class members as individual plaintiffs. DE 1289. But the district court denied the motion in light of the “advanced stage of this proceeding,” DE 1315, later making clear, however, that “all members of the putative class” were “subsumed in this MDL proceeding.” DE 1472 at 7–8.

In May 2019, the district court denied class certification. The court concluded that even if the class were ascertainable, the proposed class of thousands “[did] not satisfy the numerosity requirement” and individual issues would predominate over common ones. DE 2471 at 18.

B. The Follow-On Individual Actions

1. Petitioners are 456 members of the rejected class, including those who sought to join as plaintiffs in 2017. After certification was denied, they filed individually in New Jersey district court, asserting claims under the ATS, and under New Jersey and Colombian law. The JPML again transferred the case to the Southern District of Florida. Pet. App. 5a–6a.

The district court dismissed the federal and New Jersey claims for failure to state a claim. Pet. App. 6a. The court also dismissed petitioners' Colombian-law claims as time barred. *Id.* 6a. The court rejected petitioners' argument that the class action had tolled the statute of limitations for the Colombian claims under *American Pipe*. *Id.* 7a. It recognized both a circuit split over the application of *American Pipe* to non-federal claims, Pet. App. 50a, and an absence of controlling authority in the Eleventh Circuit. It held,

however, that any class tolling rule must come from the law that provides the statute of limitations, and that therefore neither *American Pipe* nor New Jersey's class tolling rule applied. *Id.* 56a.

2. The Eleventh Circuit affirmed. The panel acknowledged that under *American Pipe*, the federal interest in protecting the efficient administration of the federal class action system would have required tolling petitioners' claims if those claims had arisen under federal law. Pet. App. 12a. But it concluded it was an open question whether the same interests could toll non-federal claims. To decide that question, the panel applied the Eleventh Circuit's "four-step *Erie* inquiry." *Id.*; see also *id.* 10a (explaining that Colombia is "just like a 'state' for *Erie* and choice-of-law purposes").

First, the court confirmed that a choice between federal and Colombian law was necessary because they were in conflict. Pet. App. 22a. This was so even though the high court of Colombia (a civil law country with a very different class action procedure) "has not spoken on class tolling," because the panel's "review of scholarship" and expert testimony on the Colombian system led it to predict that "Colombia lacks an equitable class-tolling rule." *Id.* 15a, 18a.

Second, the court acknowledged that if a "federal statute or rule of procedure is on point, the district court is to apply federal rather than state law." *Id.* 10a (quoting *Esfeld v. Costa Crociere*, 289 F.3d 1300, 1307 (11th Cir. 2002)). But it held that *American Pipe* tolling did not automatically apply because it was established by a decision from this Court, rather than by this Court through the formal rulemaking process. Pet.

App. 22a (citing *Hanna v. Plumer*, 380 U.S. 460, 473–74 (1965)).

Third, as a consequence, the panel proceeded to ask whether “failure to apply state law to the disputed issue would lead to different outcomes in state and federal court.” Pet. App. 22a–23a (quoting *Esfeld*, 289 F.3d at 1307. If it would, then “the court must apply the state law standard, unless affirmative “countervailing federal interests” are at stake that warrant application of federal law.” Pet. App. 11a (quoting *Esfeld*, 289 F.3d at 1307 (in turn quoting *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 432 (1996))). Here, the court determined that “applying the rule in *American Pipe* in diversity class actions is ‘outcome determinative’” because petitioners’ claims would be dismissed as untimely only if tolling does not apply. Pet. App. 23a.

Fourth, the court considered whether “affirmative countervailing federal interests” nonetheless justified applying the federal rule. Pet. App. 11a (cleaned up). To answer that question, the court focused principally on Colombia’s interest in applying its predicted no-tolling rule, finding applying federal law would “undermine Colombia’s significant interest in the expeditious disposition of class actions.” Pet. App. 29a. Without further explanation, or any examination of the federal interests this Court identified in *American Pipe*, the Eleventh Circuit then announced that “any countervailing federal interests cannot outweigh the application of Colombian law.” *Id.*

Accordingly, the Eleventh Circuit held that the statute of limitations for petitioners’ claims was not

tolled pending class certification in the original Rule 23 action. They were therefore dismissed as untimely.³

3. The claims of the original named plaintiffs remain pending and are proceeding toward trial. The district court recently denied summary judgment for Chiquita on most of the claims, finding adequate evidence to hold Chiquita liable.

REASONS FOR GRANTING THE PETITION

This Court should take this case to address an important question that has split the courts of appeals. The conflict is longstanding, splintered three ways, and incapable of resolution without this Court's intervention. The issue arises frequently, affects the decisions of countless future putative class members, and as *American Pipe* itself explains, involves a rule that is critical to the efficient administration of the federal courts. This Court should intervene now.

I. Circuits Are Split 2–3–2 Over Whether Federal Class Actions Toll The Statute Of Limitations For Non-Federal Claims.

As multiple courts of appeals and the two leading treatises agree, “[t]here is a conflict as to whether the rule of *American Pipe* applies to actions founded on state law.” *Stone Container Corp. v. United States*, 229 F.3d 1345, 1356 n.6 (Fed. Cir. 2000); *see also Sawtell v. E.I. du Pont de Nemours & Co., Inc.*, 22 F.3d 248,

³ The district court had also rejected plaintiffs' attempts to show that some were entitled to minority tolling. The Eleventh Circuit vacated that portion of the decision, remanding to let plaintiffs amend their complaint. Around 10% of the plaintiffs might qualify based on age.

253 (10th Cir. 1994) (whether “*American Pipe* . . . appl[ies] to a state claim heard in a federal court solely on diversity grounds . . . is currently disputed among the circuits”); Wright & Miller, Fed. Prac. & Proc. § 4511 (3d ed., 2022 update) (similar); 3 Newberg & Rubenstein on Class Actions § 9:67 (6th ed.) (Dec. 2022 update) (same).

The courts of appeals take three different views: two hold that a pending federal class action always tolls state law claims as a matter of federal law, three say it never does, and two say it sometimes can.

A. Two Circuits Toll Non-Federal Claims.

Eighth Circuit. In the Eighth Circuit, a federal class action always tolls the limitations period governing non-federal claims, because of the strong federal interest in the efficient administration of Rule 23 class actions. This has been the “law of [the Eighth] Circuit” since 1993, *In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, 391 F.3d 907, 915 (8th Cir. 2004) (*General American*) (citing *Adams Pub. Sch. Dist. v. Asbestos Corp.*, 7 F.3d 717, 718–19 (8th Cir. 1993)), despite the emergence of divergent views in other circuits and the opportunity to reconsider it.

In *General American*, plaintiffs “claim[ed] that their membership in a [Rule 23] class action” in Missouri “tolled the statutes of limitations on their claims” under Pennsylvania law. 391 F.3d at 914. Pennsylvania “d[id] not allow . . . cross-jurisdictional tolling,” so the federal class action “would have no effect on the statutes of limitations for plaintiffs’ claims” under Pennsylvania law. *Id.* at 914–15. The Court concluded that tolling was nevertheless

available under federal law because “the federal interest in ‘the efficiency and economy of the class-action procedure’ outweighs any state interest” in denying class tolling. *Id.* at 915 (quoting *Adams*, 7 F.3d at 718–19).⁴

Ninth Circuit. The Ninth Circuit has likewise applied *American Pipe* tolling to non-federal claims in a diversity case. In *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010 (9th Cir. 2000), the plaintiffs had been members of a putative class action in federal court which had raised, among other things, claims under California law. The named plaintiffs failed to seek class certification before a court-imposed deadline and their individual claims were ultimately dismissed. *Id.* at 1013. When some putative class members then filed the same claims in federal court, the defendants argued the claims were untimely. The Ninth Circuit, however, held that *American Pipe* applied and tolled the California claims at least until

⁴ The Eleventh Circuit characterized the Eighth Circuit’s holding in *Adams* as dictum. Pet. App. 32a n.6. That is incorrect – the tolling ruling was an alternative ground, which is not dictum in the Eighth Circuit. See *Adams*, 7 F.3d at 719; *Hall v. Luebbers*, 351 F.3d 369, 372 (8th Cir. 2003) (“When two independent reasons support a decision, neither can be considered obiter dictum.”) (citation omitted). In any event, the Eleventh Circuit disregarded the Eighth Circuit’s subsequent decision in *General American*, which unambiguously reaffirmed that *Adams*’ holding is “the law of our Circuit.” 391 F.3d at 915.

the deadline for moving for class certification in the prior case. *Id.* at 1018–19.⁵

B. Three Circuits Refuse To Apply *American Pipe* To Non-Federal Claims.

The Fourth, Second, and Seventh Circuits have adopted the opposite approach and always apply the state rule, even when it provides no tolling.

Fourth Circuit. The Fourth Circuit’s rule is exemplified by *Wade v. Danek Medical, Inc.*, 182 F.3d 281, 284 (4th Cir. 1999). There, a plaintiff was injured by an implanted medical device. *Id.* Fourteen months later, a putative federal class action was filed, at which point, ten months were left on the statute of limitations for her state law claim. *Id.* The district court took over a year to deny the motion for class certification, after which the plaintiff filed. The district court dismissed it as untimely, and the Fourth Circuit affirmed. *Id.* at 290. The court purported to apply this Court’s decision in *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980), which held that state rules on when an action is commenced apply in federal diversity cases if the state rule is “an integral part of the state statute of limitations.” *Id.* at 752. The Fourth Circuit read *Walker* generally to require that “a state statute of limitations applies . . . the state’s accompanying rule regarding equitable tolling should also apply.” 182 F.3d at 289. Although the court

⁵ When the original class action was filed in state court, the Ninth Circuit holds that the tolling effect of a state lawsuit on state claims is determined by state law. *See, e.g., Albano v. Seah Homes Ltd. Partnership*, 634 F.3d 524, 527, 529-30 (9th Cir. 2011).

recognized that the rule of *American Pipe* is founded on federal interests in class action administration (and not the policies behind state statutes of limitations), it nonetheless held that state law controlled whether a prior federal class action tolls the limitations period for state law claims. *Id.* at 288–90.

Second Circuit. The Second Circuit has the same rule. In *Casey v. Merck & Co.*, 653 F.3d 95 (2d Cir. 2011), the court rejected the argument “that *American Pipe* announced a federal tolling rule that applies to all cases filed in federal court, regardless of the nature of the claims or the basis for federal jurisdiction,” and held instead that “a federal court . . . must look to the law of the relevant state” when sitting in diversity. *Id.* at 99, 100.

Seventh Circuit. So, too, in the Seventh Circuit. For example, in *Hemenway v. Peabody Coal Co.*, 159 F.3d 255 (7th Cir. 1998), the court rejected the district court’s reliance on *American Pipe* tolling to preserve former class members’ state law claims. *Id.* at 265. The Seventh Circuit expressed a similar distillation as the Fourth Circuit: “When state law supplies the period of limitations, it also supplies the tolling rules.” 159 F.3d at 265.

C. Two Circuits Apply A Case-Specific Balancing Test.

The Fifth and Eleventh Circuit reject the Second, Fourth and Seventh Circuits’ view that under cases like *Walker*, tolling rules for state limitations periods can only ever come from state law. Instead, they agree that a federal tolling rule can apply, if the federal interest underlying the rule is sufficiently strong. But

rather than adopt a uniform rule, like the Eighth and Ninth Circuits, the Fifth and Eleventh have adopted an ad-hoc, case-by-case balancing test that turns on the strength of states' interest in the rigid application of the particular statutes of limitations at issue.

Fifth Circuit. Unlike the Second, Fourth, and Seventh, the Fifth Circuit has acknowledged that “a federal court sitting in diversity may disregard a state tolling rule” given a sufficiently “countervailing federal consideration.” *Vaught v. Showa Denko K.K.*, 107 F.3d 1137, 1146 (5th Cir. 1997) (quoting *Cook v. G.D. Searle & Co.*, 759 F.2d 800, 803 (10th Cir. 1985)). But unlike the Eighth and Ninth Circuits, the Fifth has rejected any claim that the federal interests underlying *American Pipe* are sufficiently strong to toll state limitations periods in every case. Instead, it has engaged in a case-specific weighing of interests, concluding in two instances that state interests in denying class action tolling should prevail. *See Vaught*, 107 F.3d at 1146–47 (concluding that Texas’s refusal to recognize class tolling in its courts reflected “a deliberate policy choice,” which “the strong federal policy favoring the tolling of limitations” could not “trump”); *see also Weatherly v. Pershing L.L.C.*, 945 F.3d 915, 927 (5th Cir. 2019) (reaching same conclusion with respect to Florida law).

Eleventh Circuit. In the decision below, the Eleventh Circuit adopted a similar balancing approach. While Colombia has never considered the class tolling issue for its own class actions, the Eleventh Circuit found that “Colombia seems to have adopted a class action system that illustrates ‘a deliberate policy choice by [its] legislature’ favoring

the speedy resolution of class action claims.” Pet. App. 30a (quoting *Vaught*, 107 F.3d at 1147 (emphasis and alteration added by the opinion below)). In the court’s view, that meant “Colombia’s interests[] outweigh[ed] the application of federal law.” *Id.* 12a.⁶

* * *

The Circuits are not going to resolve this entrenched split on their own. The Eighth Circuit has twice held that federal interests mandate a federal class tolling rule. It denied rehearing in *Adams* and it did not change course in *General American* despite the emergence of contrary decisions in other circuits. The Fourth Circuit, in turn, has acknowledged and rejected both the Eighth and Fifth Circuit approaches. *See Wade*, 182 F.3d at 289 n.11. And the Eleventh Circuit denied rehearing in this case. Pet. App. 67a. At this point, only this Court can restore uniformity to the law.

II. The Question Is Important And The Split Is Intolerable.

The present division and uncertainty in the circuits over such a recurring and important question should not stand.

1. The question presented is important. As *American Pipe* recognized, the availability of class tolling is critical to the proper functioning of the Rule 23 class action mechanism. Moreover, the answer to the question presented determines the fate of

⁶ Although the case involved foreign law, the Eleventh Circuit held that the same analysis applies to state law claims in diversity cases as well. Pet. App. 29a-32a.

lawsuits, often important cases implicating vital interests that may be dismissed without regard to their merit based on the happenstance of what tolling rule a circuit applies. In this very case, original named plaintiffs are headed to trial, while petitioners would be too if not for the Eleventh Circuit's error.

As the depth of the circuit conflict reflects, the issue is also constantly recurring.⁷ That frequency is

⁷ See also, e.g., *Wilkins v. Genzyme Corp.*, No. CV 21-10023-DPW, 2022 WL 4237528, at *13 (D. Mass. Sept. 14, 2022); *Lombardo v. CitiMortgage, Inc.*, No. CV 18-10299-PBS, 2019 WL 3546630, at *8–9 (D. Mass. Mar. 4, 2019); *Soward v. Deutsche Bank AG*, 814 F. Supp. 2d 272, 278 (S.D.N.Y. 2011); *Wilchfort v. Knight*, 307 F. Supp. 3d 64, 81 (E.D.N.Y. 2018); *In re Fosamax Prod. Liab. Litig.*, 694 F. Supp. 2d 253, 257 (S.D.N.Y. 2010), *aff'd sub nom. Casey v. Merck & Co.*, 678 F.3d 134 (2d Cir. 2012); *Primavera Familienstiftung v. Askin*, 130 F. Supp. 2d 450, 516 (S.D.N.Y.), *abrogated by Casey v. Merck & Co.*, 653 F.3d 95 (2d Cir. 2011); *Vincent v. Money Store*, 915 F. Supp. 2d 553, 562 (S.D.N.Y. 2013); *Williams v. Dow Chem. Co.*, No. 01 CIV. 4307 (PKC), 2004 WL 1348932, at *13 (S.D.N.Y. June 16, 2004); *Germinaro v. Fid. Nat. Title Ins. Co.*, 107 F. Supp. 3d 439, 457 (W.D. Pa. 2015); *Kromnick v. State Farm Ins. Co.*, No. CIV.A. 85-5824, 1986 WL 7193, at *5 (E.D. Pa. June 20, 1986) *In re Linerboard Antitrust Litig.*, 223 F.R.D. 335, 345–47 (E.D. Pa. 2004); *Flick v. Wyeth LLC*, No. 3:12-cv-00007-NKM, 2012 U.S. Dist. LEXIS 78900, at *19–20 (W.D. Va. June 6, 2012); *Sanchez v. Lasership, Inc.*, No. 1:12CV246 GBL/TRJ, 2012 WL 3730636, at *15 (E.D. Va. Aug. 27, 2012); *Orleans Par. Sch. Bd. v. U.S. Gypsum Co.*, 892 F. Supp. 794, 805 (E.D. La. 1995), *aff'd sub nom. Orleans Par. Sch. Bd. v. Asbestos Corp.*, 114 F.3d 66 (5th Cir. 1997); *In re Vioxx Prods. Liab. Litig.*, 478 F. Supp. 2d 897, 906–08 (E.D. La. 2007); *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, No. CV MDL 2047, 2019 WL 1057003, at *8 (E.D. La. Mar. 6, 2019); *Willoughby v. Vill. of Fox Lake*, No. 17 CV 2800, 2018 WL 6324917, at *2 (N.D. Ill. Dec. 4, 2018); *Herron v. Gold*

only likely to increase due to the Class Action Fairness Act, which relaxed the complete-diversity requirement for class actions in order to broaden access to federal court for class actions raising solely state law claims. 28 U.S.C. § 1332(d). Since its passage, “[t]he monthly average number of diversity of citizenship class actions filed in or removed to the federal courts has approximately doubled.” Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act on the Federal Courts: An Empirical Analysis of Filings and Removals*, 156 U. PA. L. REV. 1723, 1723 (2008).

2. Until this Court intervenes, the fate of putative class members’ suits will be arbitrarily resolved though accidents of geography. *See generally*, N. Robert Stoll & Scott Schor, *Too Late and Too Early*:

Standard Baking, Inc., No. 20-CV-07469, 2021 WL 1340804, at *3 n.1 (N.D. Ill. Apr. 9, 2021); *Montegna v. Ocwen Loan Servicing, LLC*, No. 17-CV-00939-AJB-BLM, 2017 WL 4680168, at *7 (S.D. Cal. Oct. 18, 2017); *Yetter v. Ford Motor Co.*, 428 F. Supp. 3d 210, 226 (N.D. Cal. 2019); *Hendrix v. Novartis Pharm. Corp.*, 975 F. Supp. 2d 1100, 1110 (C.D. Cal. 2013), *aff’d sub nom. Hendrix v. Novartis Pharms. Corp.*, 647 F. App’x 749 (9th Cir. 2016); *Lambert v. Nutraceutical Corp.*, No. CV 13-05942-AB (EX), 2020 WL 12012559, at *4 (C.D. Cal. Jan. 8, 2020); *Barela v. Showa Denko K.K.*, No. CIV. 93-1469 LH/RLP, 1996 WL 316544, at *1 (D.N.M. Feb. 28, 1996); *Thornton v. DaVita Healthcare Partners, Inc.*, No. 13-CV-00573-RBJ-KMT, 2016 WL 7324094, at *4 (D. Colo. Dec. 13, 2016); *City of St. Petersburg v. Total Containment, Inc.*, No. 06-20953-CIV, 2008 WL 11403203, at *8 (S.D. Fla. Oct. 9, 2008); *Sacred Heart Health Sys., Inc. v. Humana Mil. Healthcare Servs., Inc.*, No. 3:07CV62/MCR, 2008 WL 2385506, at *2 (N.D. Fla. June 9, 2008); *Anderson v. Mosaic Fertilizer LLC*, No. 8:19-CV-1225-MSS-AEP, 2021 WL 4762421, at *5 (M.D. Fla. Sept. 7, 2021).

The Inconsistent Tolling Rules for Statutes of Limitation Provided by Class Actions, Class Action Reports, vol. 27, No. 2 (Mar.–Apr. 2006). For example, had this case been transferred to Minneapolis instead of Miami, petitioners' claims would have been tolled and they would be entitled to litigate their claims on the merits. Depending on the court that hears the claim, the same claim could always, never, or sometimes proceed, encouraging forum shopping and leading to inconsistent outcomes in otherwise identical cases. Indeed, in cases arising in the Fifth and Eleventh Circuits, courts addressing tolling of identical state-law claims could reach conflicting decisions based on their differing assessments of the importance of the underlying state interest.

3. Sometimes, parties can protect themselves from such arbitrary outcomes by identifying the rule that will govern their case and acting in accordance with its requirements. But as this case shows, that will often be impossible.

To start, the law remains unresolved in five circuits. Litigants can only guess which of the existing three approaches those circuits might adopt. And even in some of the circuits that have taken a position, the outcome of the circuit's test can be difficult to predict, and difficult for courts themselves to determine.

In circuits that may apply state tolling rules, the courts will often have to start by determining *which* state's law applies; where, as in many diversity cases, more than one state has a connection to the case, the court will have to conduct a choice-of-law analysis. And while the outcome of that analysis may itself be difficult to predict, it matters a lot, because state law

varies widely. Some states do not permit class tolling under any circumstance; some permit it only when the class action was filed in their own courts; others do not discriminate against out-of-state or federal class actions and always recognize class tolling; and many other states still have not ruled, so courts will have to guess whether they would allow class tolling. *See Marc Shapiro & Shane McCammon, A Guide to Determining Class Claim Time Bars*, LAW360, (Aug. 13, 2020), <https://www.law360.com/articles/1299985/a-guide-to-determining-class-claim-time-bars>. Here, for example, Colombia is a civil law system in which class action tolling would not normally arise because class certification decisions must generally be made within 10 days of the suit's filing. Pet. App. 27a.

Even if class members could predict a future court's assessment of state class tolling rules, that is just a part of the overall analysis in the Fifth and Eleventh Circuits. Plaintiffs in those circuits must then predict the outcome of a jurisdiction-specific and standardless weighing of competing state and federal interests to know whether tolling is available.

And all this assumes plaintiffs can figure out which circuit's rules will apply in the first place. But that is frequently impossible to know in advance as well. In this case, for example, at the time the class action was filed, petitioners may have been able to anticipate that if class certification were denied, they would file their individual actions in New Jersey (where Chiquita is headquartered). But even if they knew what the rule would be in the Third Circuit (which they didn't, as that Circuit has yet to wade into the circuit conflict), they could not be assured that the

tolling question would be decided under Third Circuit law. Here, as will often be the case, those individual actions were chosen for coordination by the panel for multidistrict litigation. (A case that is a plausible candidate for a class action will often also generate sufficient numbers of follow-on individual actions to trigger MDL treatment).⁸ The MDL panel, in turn, could send the cases anywhere — here, to a court in Florida that had no connection to the original class action or petitioners’ New Jersey filing. *See* Newberg & Rubenstein § 6:60 (referring to 28 U.S.C. § 1407(a)) (noting MDL panel has “essentially unfettered discretion” on where to transfer cases). And even when a case is not sent to the JPML, a plaintiff’s choice of forum for a follow-on action can be countermanded by a district court’s discretionary venue decision or the vagaries of personal jurisdiction.

Given all this, prudent plaintiffs will file individual protective suits before the statute of limitations expires even when a pending class action may make that step unnecessary — exactly the result *American Pipe* sought to avoid.

There is no point in allowing this confusion and uncertainty to persist. The question has been percolating for decades. It is time for this Court to provide a definitive answer.

⁸ As of 2019, MDLs had swelled to 37% of pending civil cases, up from 1% in 1991. Nora Freeman Egstrom, *The Lessons of Lone Pine*, 129 YALE L.J. 2, 7 (2019); *see also* *Statistical Analysis of Multidistrict Litigation Under 28 U.S.C. § 1407 Fiscal Year 2019*, JPML, at 5 (2019) (reporting that nearly 750,000 civil actions have been subjected to the MDL process since 1968).

III. The Decision Below Is Wrong.

Certiorari is also warranted because the decision below is wrong, creating all of the problems that *American Pipe* explicitly sought to avoid without any countervailing justification.

A. Nothing In *American Pipe*'s Rationale Turns On The Source Of The Plaintiffs' Claims.

In *American Pipe* this Court held that “the rule most consistent with federal class action procedure must be that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” 414 U.S. at 554. Although the case involved only federal claims, nothing in that holding or its rationale turned on that fact.

To the contrary, the Court adopted its tolling rule for two reasons. First, the Court concluded that filing a Rule 23 class action “commences the action for all [class] members.” 414 U.S. at 550. Thus, the notion that a class member who later sues asserts a separate claim that must individually meet the timeliness requirements is “simply inconsistent with Rule 23.” *Id.* Second, a class tolling rule is “necessary” to achieve “the purposes of litigative efficiency and economy” that Rule 23 “was designed to serve.” 414 U.S. at 556. Nothing in that reasoning turns on the source of the claim being tolled.

Instead, *American Pipe* ensures the efficacy of “federal class action procedure,” 414 U.S. at 554, and reduces the burden on federal courts a lack of tolling

would inflict, by dictating the legal consequences of that class action proceeding on subsequent litigation. Whether the claim is founded in state or federal law, failing to toll would induce plaintiffs to file protective claims before the class certification decision — “precisely the multiplicity of activity which Rule 23 was designed to avoid.” *Id.* at 551.

B. Federal Law Determines The Scope Of Federal Tolling Rules Like *American Pipe*'s.

The Eleventh Circuit nonetheless presumed that “a tolling rule tends to follow the accompanying statute of limitations — so long as the former operates as an ‘integral’ part of the latter,” citing this Court’s decision in *Walker*, 446 U.S. at 746. Pet. App. 24a–25a. Several other circuits have likewise concluded that *Walker* and similar cases preclude applying *American Pipe* tolling to non-federal claims. *See, e.g., Wade*, 182 F.3d at 289; *Vaught*, 107 F.3d at 1145. That is incorrect.

In *Walker*, this Court considered whether the federal rule for service of process governed the commencement of an action for purposes of a state statute of limitations. The Court held that it did not, reasoning that the federal service rule was not intended to operate as a tolling rule, “much less that it purported to displace state tolling.” 446 U.S. at 750–51. In the absence of a governing federal rule, the Court held that state law governs the commencement of a state statute of limitations, reasoning that accrual rules are “an integral part” of the “policies served by the statute of limitations.” 446 U.S. at 751.

As several courts have recognized, and contrary to *Wade* and *Hemenway*, *Walker* does not mean that state law governs every conceivable tolling rule that might apply to a state law claim in a federal diversity action. See, e.g., *Vaught*, 107 F.3d at 1146; *Cook v. G.D. Searle & Co.*, 759 F.2d 800, 803 (10th Cir. 1985); Pet. App. 24a. Instead, the starting point in *Walker* was “the absence of a federal rule directly on point.” 446 U.S. at 752. In that context, *Walker* applied a state rule that was “an integral part of the several policies served by the statute of limitations.” *Id.* at 751. But when federal law establishes a tolling rule to advance federal interests, federal law determines the rule’s reach and operation. And in any event, class tolling rules, unlike many other tolling rules, are not integral to state statutes of limitations.

This Court’s decision in *Chardon v. Soto*, 462 U.S. 650 (1983), illustrates that federal tolling rules that advance federal interests necessarily apply to all claims. In that case, plaintiffs brought civil rights claims under 42 U.S.C. § 1983. Federal law prescribed that the statute of limitations for such claims be borrowed from state law, there, the law of Puerto Rico. See *id.* at 655–56. The plaintiffs argued that the state statute of limitations had been tolled during the pendency of a prior federal class action under *American Pipe*. *Id.* at 654. The question before the Court was whether the nature of that tolling – *i.e.*, whether the federal case suspended or restarted the limitations period – was determined by Puerto Rican or federal law. *Id.* at 652. In answering that question, the Court did not even entertain the idea that Puerto Rico law controlled simply because it provided the

statute of limitations. Nor did the Court consider Puerto Rico’s interests in applying its tolling rule in this federal action. Instead, all members of the Court agreed that this question was determined by whether “the federal interest set forth in *American Pipe* [was] fully protected.” *Id.* at 661; *see also id.* at 667 (Rehnquist, J., dissenting). The Court ultimately selected Puerto Rico’s more generous tolling rule, but only because it “vindicated” the “*federal* interest in . . . the efficiency and economy of the class-action procedure.” *Id.* at 661 (emphasis added).

In this respect, *American Pipe* tolling is like other judge-made procedural rules that govern the effect of a prior federal action on subsequent litigation. As now-Justice Barrett has explained, even after *Erie* abolished “general common law,” federal courts retain a “narrow but deep” power to set federal rules within “enclaves of federal interest.” Amy Coney Barrett, *Procedural Common Law*, 94 VA. L. REV. 813, 820–21 (2008). This power includes at least some “inherent authority over procedure” that can even extend to “ostensibly procedural doctrines” that have “substantive effects.” *Id.* at 831, 846.

For example, in *Semtek International Inc. v. Lockheed Martin Corp.*, this Court addressed “whether the claim-preclusive effect of a federal judgment dismissing a diversity action on statute-of-limitations grounds is determined” by state or federal law. 531 U.S. 497, 499 (2001). Writing for a unanimous Court, Justice Scalia explained that no federal statute, constitutional provision, or federal rule of civil procedure answered the question. *Id.* at 506–07. The Court rejected petitioner’s contention that, as a

consequence, the preclusive effect of the federal diversity judgment would come from state law. *See id.* Instead, Justice Scalia concluded that “federal common law governs,” because that is the only approach that allows “*this Court*” to protect “federal interests,” including “federal courts’ interest in the integrity of their own processes.” *Id.* at 507–09.

Federal class action tolling is no different. Both preclusion and tolling address the effect of a federal action on subsequent litigation. Indeed, both involve “[p]rocedural rules and policies” that must be “enforced outside the boundaries of the initial action in order to be fully effective.” Stephen B. Burbank & Tobias B. Wolff, *Class Actions, Statutes of Limitations and Repose, and Federal Common Law*, 167 U. PA. L. REV. 1, 32 (2018). In other words, both implicate federal interests in the “integrity of their own processes.” *Semtek*, 531 U.S. at 509.

To be sure, in *Semtek*, as in *Chardon*, the Court elected to “adopt[], as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits.” 531 U.S. at 508. But the Court held that “[t]his federal reference to state law will not obtain, of course, in situations in which the state law is incompatible with federal interests.” *Id.* at 509. It thus was willing to borrow state law only after concluding that there was “no need for a uniform federal rule” and “no such conflict with federal interests” in the preclusion context. *Id.* at 508–09. Here, in contrast, only a uniform federal rule can avoid the waste and

inefficiency *American Pipe* guards against.⁹ Indeed, it would be particularly remarkable for federal courts to simply adopt state class action tolling rules as a matter of course when the states themselves have not asked whether those rules should apply in federal courts and have not taken into account the distinctly federal interests underlying *American Pipe*.

Regardless, it is hard to see how a state rule rejecting class action tolling rule could be “an integral part of the state statute of limitations.” *Walker*, 446 U.S. at 746. Class tolling is a principle that exists apart from the policy considerations underlying any state’s timing rules. Indeed, a state rule contrary to *American Pipe* is not “integral” to a state’s statute of limitations, because *American Pipe* tolling is “in no way inconsistent with the functional operation of a statute of limitations.” 414 U.S. at 554. The “policies of ensuring essential fairness to defendants and of barring a plaintiff who has ‘slept on his rights’ are satisfied” when a named plaintiff “commences a suit and thereby notifies the defendants not only of the substantive claims being brought against them, but also of the number and generic identities of the

⁹ In *California Public Employees’ Retirement System v. ANZA*, 137 S. Ct. 2042 (2017), this Court held that *American Pipe* is not premised on the interpretation of any statute or Rule 23, and therefore concluded that it could not apply to “alter the unconditional language and purpose of the 3-year statute of repose” for certain federal securities claims. *Id.* at 2051. In stating that the rule is founded instead in courts’ equitable powers, *ibid.*, the Court did not decide whether those powers are limited to cases involving solely federal causes of action. And as now-Justice Barrett has explained, and *Semtek* illustrates, they are not.

potential plaintiffs who may participate in the judgment.” 414 U.S. at 554–55. Even if, despite this, a no class tolling rule could somehow be integral to a state class action regime, courts will have no principled basis to make that determination.

C. The Federal Interests Animating *American Pipe* Tolling Require Its Application To State-Law Claims In Federal Diversity Cases.

While some circuits have wrongly understood *Walker* to require applying state law to all tolling rules in diversity cases, the Eleventh Circuit ultimately acknowledged that *American Pipe* could provide the applicable tolling rule if the federal interests in that rule were sufficiently weighty. Pet. App. 24a. It concluded, without explanation, that they were not, but that is demonstrably incorrect.

As discussed, *American Pipe* ensures that federal class actions could perform their intended function of efficiently processing common claims by removing the incentive for potential class members to file potentially unnecessary individual actions.

Indeed, in *Crown*, this Court extended *American Pipe* to toll the limitations period for filing individual actions because “the same inefficiencies would ensue if *American Pipe*’s tolling rule were limited to permitting putative class members to intervene after the denial of class certification.” 462 U.S. at 350. The Court also noted that absent tolling, the “right to opt out and press a separate claim remained meaningful” only because “the filing of the class action tolled the statute of limitations under the rule of *American*

Pipe.” *Id.* at 351–52; see also *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985) (opt-out rights in cases seeking money damages are constitutionally required).

The Court should apply the same rule to toll the limitations period of state claims for the same reasons here. The Eleventh Circuit did not dispute that denying tolling for state-law claims would have exactly the consequences this Court sought to avoid in *American Pipe*, even in cases like this one where the class also filed federal claims. In *American Pipe* itself, for example, the Eleventh Circuit would hold that the initial class action would have failed to toll the statute of limitations for any state-law antitrust or unfair competition claims the plaintiffs might have brought in that case (as antitrust plaintiffs often do), putting the class members back in precisely the position of potentially losing their claims if they waited for class certification to run its course in the federal case. Although purporting to balance competing interest, the Eleventh Circuit ultimately was unable to offer any account of why the burdens on the federal system this Court found intolerable in *American Pipe* should be endured whenever plaintiffs assert state law claims alongside, or instead of, federal causes of action.

At the same time, the Eleventh Circuit’s rule in particular puts putative class members in a particularly impossible position. When, as commonly happens, the statute of limitations on their non-federal claims will run out before the courts conclusively resolve whether they are members of a federal class action, they must guess how some future federal court will balance incommensurate state and

federal interests in finality and efficient class action administration. And if they guess wrong, they may lose meritorious claims. Class members will therefore often inundate the federal system with hundreds or thousands of potentially unnecessary lawsuits. Indeed, in this case, some of petitioners *tried* to join the original action as individual plaintiffs but the district court denied the request. *See supra* Section II.A. The rule applied in this case thus eviscerates the federal scheme in which putative class members are encouraged to wait until a class certification decision is made before having to opt-out or otherwise pursue their claims individually; under this rule, class members will have a strong interest in filing their own claims regardless of the possibility of class treatment.

Just as state courts can determine whether class actions in state court toll subsequent individual filings in their courts, so too federal courts may properly decide the tolling effect of class actions filed in federal court on later federal litigation. Every reason that led this Court to toll the limitations period for the federal claims in *American Pipe* applies equally to the state claims in this case. The Court should grant certiorari to make clear that the same rule applies in both contexts.

CONCLUSION

The petition for certiorari should be granted.

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