No. 18A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

INTEGRITY STAFFING SOLUTIONS, INC., AMAZON.COM, INC.,

Applicants,

v.

JESSE BUSK, LAURIE CASTRO, SIERRA WILLIAMS, MONICA WILLIAMS, VERONICA HERNANDEZ,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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CORPORATE DISCLOSURE STATEMENT

Integrity Staffing Solutions, Inc. and Amazon.com, Inc. have no parent corporations, and no publicly held company owns 10% or more of either company's stock.

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To Associate Justice Sonia Sotomayor, Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

1. In accordance with this Court's Rules 13.5, 22, and 30.3, applicants Integrity Staffing Solutions, Inc. and Amazon.com, Inc. respectfully request an extension of 30 days to file a petition for a writ of certiorari. The petition will challenge the decision of the Sixth Circuit in *Busk* v. *Integrity Staffing Solutions, Inc.*, 905 F.3d 387 (6th Cir. 2018). The Court of Appeals issued its opinion on September 19, 2018 (attached as Exhibit A), and entered an order denying applicants' petition for rehearing on November 1, 2018 (attached as Exhibit B). Without an extension, the petition for a writ of certiorari would be due on January 30, 2019. With the requested extension, the petition would be due on March 1, 2019. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. When this case was last here, the Court unanimously held that time spent in antitheft security screening is not time for which the warehouse workers in this case are owed compensation under the Fair Labor Standards Act of 1938 ("FLSA"). See *Integrity Staffing Sols.* v. *Busk*, 135 S. Ct. 513, 515 (2014) (*Busk I*). Although these security screenings are required by the employer and for the employer's benefit, the relevant question under the FLSA is whether the security screenings are among the principal activities that the employees are employed to perform or an intrinsic element of those activities that must be performed if the employees are to perform their principal activities. *Id.* at 519. Here, "undergoing security screenings [is] not

itself work of consequence that the employees perform[] for their employer." *Id.* at 520 (Sotomayor, J., concurring).

3. On remand, however, respondents continued to seek compensation for these security screenings by invoking state law analogues of the FLSA. As relevant here, they contended that while such screenings may not qualify as work that requires compensation under the FLSA, they nevertheless qualify as work that requires compensation under Nevada's statutory equivalent.

4. A divided Sixth Circuit panel agreed with respondents. 905 F.3d 387. But it did not base that conclusion on any specific feature of Nevada law. On the contrary, it rested its holding on its view of federal law, expressly holding that "Nevada law incorporates the federal definition of 'work.'" *Id.* at 401. On the Sixth Circuit majority's view, the federal definition of "work" requires a result that is the complete opposite of the result in *Busk I*: while this Court held there that security screenings were not compensable even though they were required by the employer and for the employer's benefit, 135 S. Ct. at 519, the majority below held that the screenings *were* compensable *precisely because* they were "required by the employer" and "solely for the benefit of the employers and their customers," 905 F.3d at 399 (citations omitted). Crucial to the Sixth Circuit majority's conclusion was its belief that the Portal-to-Portal Act of 1947, which produced the holding of *Busk I*, did not affect the pre-Portal-to-Portal-Act definition of "work." 905 F.3d at 400. That conclusion cannot be reconciled with *Busk I* or with this Court's previous holdings under the FLSA.

5. The decision below also deepened an existing circuit conflict in rejecting applicants' alternative argument for rejecting respondents' claims. Even before the Portal-to-Portal Act, the federal definition of "work" required exertion by the worker (unless the worker was being employed to "wait[] for work" or to be "on call," much as a firefighter might be employed to remain in the firehouse in case the alarm sounds). *E.g.*, *Tenn. Coal, Iron & R. Co.* v. *Muscoda Local No. 123*, 321 U.S. 590, 598-599 (1944). The majority rejected this argument, concluding that "the federal definition no longer requires 'exertion'" and that undergoing a security screening constitutes exertion in any event. 905 F.3d at 400-401 (citation omitted). Besides contradicting this Court's precedents, these conclusions conflict with decisions by the Second and Tenth Circuits. See *Reich* v. *IBP, Inc.*, 38 F.3d 1123, 1125-1126 (10th Cir. 1994); *Reich* v. *N.Y. City Transit Auth.*, 45 F.3d 646, 651-652 (2d Cir. 1995).

6. Applicants intend to file a petition for a writ of certiorari challenging both of these rulings. The petition will address two questions: (1) whether the Portal-to-Portal Act amended the federal definition of "work" or left the previous definition unchanged, and (2) whether the federal definition of "work" requires a degree of exertion by the employee beyond the minimal effort it takes to pass through a security screening while exiting the workplace.

7. Additional time is necessary to permit counsel to prepare and file a petition that adequately addresses these important issues. Between the Sixth Circuit's order denying applicants' petition for rehearing on November 1, 2018, and the current dead-

line of January 30, 2019, counsel with principal responsibility for preparing the petition, David B. Salmons and Michael E. Kenneally, have had numerous preexisting professional obligations, including: oral arguments in *Prime International Trading, Ltd.* v. *BP PLC*, No. 17-2233 (2d Cir.), *Southwest Airlines Co.* v. *Local 555, Transport Workers Union of America AFL-CIO*, No. 18-10122 (5th Cir.), *Jordan* v. *Maxim Healthcare Services, Inc.*, No. 18-1290 (10th Cir.), and *Badmus* v. *D.C. Water & Sewer Authority*, No. 17-CV-825 (D.C.); appellate briefs in *Cable Line, Inc.* v. *Comcast Cable Communications of Pennsylvania, Inc.*, No. 18-2316 (3d Cir.), *Beach Mart, Inc.* v. *L&L Wings, Inc.*, No. 18-1477 (4th Cir.), *Jordan* v. *Maxim Healthcare Services, Inc.*, No. 18-1290 (10th Cir.), and *Children's Hospital Association of Texas* v. *Azar*, No. 18-5135 (D.C. Cir.); and a reply brief in support of certiorari in *HP Inc.* v. *Berkheimer*, No. 18-415 (U.S.).

8. For all these reasons, applicants respectfully request that the due date for their petition for writ of certiorari be extended by 30 days, to and including March 1, 2019.

Respectfully submitted,

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Dated: January 18, 2019