NO. _____

In the Supreme Court of the United States

LACKAWANNA RECYCLING CENTER, INC.,

Petitioner,

v.

WILLIAM L. BURRELL, JOHSUA HUZZARD, AND DAMPSEY STUCKEY,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Though the district court dismissed some claims without prejudice, the primary Respondents William L. Burrell, Jr., Joshua Huzzard, and Dapmsey Stuckey, who are former lawfully incarcerated civil contemnors (hereafter the *Contemnors*), stood on their second amended complaint and sought final judgment, which the district court issued. These Contemnors then appealed. A divided panel of the Third Circuit affirmed in part, reversed in part and remanded the district court's dismissal of Contemnors' Trafficking Victims Protection Act, Fair Labor Standards Act, Racketeer Influenced and Corrupt Organizations Act, Pennsylvania Minimum Wage Act, and unjust enrichment claims against Petitioner.

The questions presented are as follows:

1. Whether lawfully incarcerated civil contemnors that voluntarily chose to participate in a discretionary work release program have a claim under the "abuse of law" clause of the Trafficking Victims Protection Act, 18 U.S.C. §§ 1591 *et seq*., thereby eliminating the essential element of coercion from a statute designed to protect actual victims of human trafficking and involuntary servitude?

2. Whether lawfully incarcerated civil contemnors can be "employees" under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*., when they are in custody and their work is inextricably tied to their incarceration?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant-Appellee below

- Lackawanna Recycling Center, Inc.

Respondents who were Plaintiffs-Appellants below (the *Contemnors*)

- William L. Burrell, Jr.
- Joshua Huzzard
- Dampsey Stuckey

Other Respondents who were Plaintiffs-Appellants below

- Anthony Cravath
- Anthony John Goodwin, Sr.
- Derrick M. Lake
- Eugene R. Taylor
- Ralph Wasko
- Timothy Alan Whited
- Torrance Allen
- Gabriel Martinez
- Gerard Nelson

Other Respondents who were Defendants-Appellants below

- Tom Staff, individually
- Louis DeNaples, individually
- Dominick DeNaples, individually
- County of Lackawanna
- Lackawanna County Solid Waste Management Authority

RULE 29.6 STATEMENT

Petitioner Lackawanna Recycling Company, Inc., is a Pennsylvania corporation with a registered office at 400 Mill Street, Dunmore, Pennsylvania 18512. Petitioner has no parent company and no publicly held company owns 10% or more of its stock.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Third Circuit

No. 21-2846

William L. Burrell, et al., *Appellants, v.* Tom Staff, et al., *Appellees*

Date of Final Opinion: February 8, 2023

Date of Rehearing Denial: March 8, 2023

U.S. District Court for the Middle District of Pennsylvania

No. 3:14-cv-1891

William L. Burrell, et al., *Plaintiffs, v.* Tom Staff, et al., *Defendants*

Date of Final Opinion: August 6, 2021

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PETITION FOR A WRIT OF CERTIORARI

Lackawanna Recycling Center, Inc. ("LRCI") respectfully requests that this Court issue a writ of *certiorari* to review the decision of the Third Circuit in this case.

OPINIONS BELOW

The Third Circuit's panel opinion (App.3a) is reported in the Federal Reporter as *Burrell v. Staff*, 60 F.4th 25 (3d Cir. 2023). The Third Circuit's order denying rehearing (App.157a) is not reported. The district court's opinion granting dismissal (App.70a) is not reported but is available at *Burrell v. Lackawanna Recycling Center, Inc.*, 2021 WL 3476140 (M.D. Pa. Aug. 6, 2021).

JURISDICTION

The Third Circuit entered its judgment on February 8, 2023. (App.1a). Petitioner filed a timely petition for rehearing on February 22, 2023. The Third Circuit denied the petition for rehearing on March 8, 2023. (App.157a). The district court had jurisdiction under 28 U.S.C. § 1331, and the Third Circuit had jurisdiction under 28 U.S.C. § 1291. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved in this petition, and included in the Appendix, are as follows:

- 29 U.S.C. § 203 (App.159a)
  Definitions
- 18 U.S.C. § 1589 (App.172a)
  Forced Labor
- 23 Pa.C.S. § 4352 (App.174a)
  Continuing Jurisdiction Over Support Orders

STATEMENT OF THE CASE

The Third Circuit's panel decision allows Contemnors' claims of human trafficking and unfair labor to proceed by "reading new meanings into old law to draw conclusions reached by no other federal circuit." App.53a. That was clear error.

Contemnors failed to pay lawful, court-ordered child support. Contemnors failed to make those payments to their families. Each was then cited for civil contempt after long periods of not paying. Each then had a hearing and a judge found, beyond a reasonable doubt, that each Contemnor had the present ability to pay the amounts owed to their children. The court then ordered Contemnors to pay the amounts owed to their children, or serve a fixed term in prison for contempt. Those orders and those findings were never challenged by Contemnors in any hearing, on appeal,

or in a petition to modify the payments, which could have been "filed at any time and shall be granted if the requesting party demonstrates a substantial change in circumstances." 23 Pa.C.S. § 4352(a) (emphasis added). Contemnors chose prison.

While lawfully imprisoned for civil contempt, each Contemnor chose to voluntarily participate in a discretionary work release program. Each asserts that, by making that choice, they have a claim under the "abuse of law" clause of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §§ 1591 *et seq*., and, further, that were not paid a minimum wage as "employees" under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq*. The district court saw through the charade of Contemnors' novel claims and dismissed them. But the Third Circuit panel majority, employing strained constructions of the relevant federal statutes, misinterpreting 23 Pa.C.S. § 4352, and relying upon unsupportable inferences from unpleaded facts, allowed those claims to proceed.

As the panel dissent rightly notes, Contemnors' choices came with consequences. App.48a. The panel majority rescued Contemnors from their own choices by allowing a host of statutory and common law claims. Contemnors did not pay child support despite having the means. Contemnors filed no petitions to modify those orders despite Pennsylvania law giving them recourse. Contemnors asked to work during their imprisonment for contempt despite having the option not to. None of those choices is disputed and none of those facts are challenged. Yet, the panel majority concluded that claims of forced servitude, human trafficking and unfair labor can now proceed in federal court because Contemnors' choices produced unappeal-

ing consequences. But Contemnors' choices, and consequences therefrom, do not warrant the panel majority's strained definitions of torture and labor – definitions other federal circuits have rejected or not employed.

Contemnors were sentenced to Lackawanna County prison for civil contempt after a state court found that they could, but were refusing to, make child support payments. App.71a. Per Pennsylvania law, Contemnors would be released from prison before expiration of their sentences, or would avoid prison altogether, by paying a "purge" amount. *Id.* The "purge" was set by the state court at an amount it concluded, beyond a reasonable doubt following an evidentiary hearing, each Contemnor could immediately pay. App.50a, 96a. The state court retained jurisdiction to provide relief if changed circumstances warranted modification of its orders. *See* 23 Pa.C.S. § 4352.

Contemnors, during their imprisonment, did not pay, or ask the state court to lower, their respective purge amounts. Instead, they asked the state court to permit them to participate in the prison's work-release program. App.71a-72a. The court agreed. County policy and state court orders gave Contemnors the option to participate in the prison's work-release program on the condition that they first perform community service through the County's community services program. *Id.* Contemnors were informed that, should they choose to participate, their community service would consist of working at the Lackawanna Recycling Center ("Center") for approximately eight hours a day at a pay rate of $5.00 per day paid into the inmate's prison commissary account. *Id.* Contemnors chose to perform community service.

As set out in the district court's opinion:

> Since at least March 31, 2005, the [Lackawanna County Solid Waste Authority ("Authority")] and [Lackawanna Recycling Center, Inc. ("LRCI")] have been parties to a contract (the "Operating Agreement") regarding the operations of the [Center], a recycling center owned by the Authority. Under the terms of the Operating Agreement, LRCI assumed responsibility for operation and management of the Center, including the hiring, supervision, training, and payment of personnel to staff the Center. Besides these employees of LRCI, however, the Operating Agreement also provided that the Authority would continue to "provide the same number of Prisoners from the Lackawanna County Prison that have historically worked at the Center as part of their work release program as security requirements dictate."
>
> In accordance with this last provision, county personnel—specifically prison guards—transport prisoners to the Center to work there. Prison guards remain on site at the Center to supervise prisoners, maintain security, and discipline prisoners. Some number of the prisoners supplied by the Authority to work at the Center are child support debtors sentenced to terms of incarceration following civil contempt proceedings for failure to pay child support.

App.72a-73a.

The district court dismissed Contemnors' second amended complaint with prejudice as to some claims and without prejudice as to others. App.8a. Contem-

nors declined to amend, and instead, gave notice of their intention to stand on their complaint. *Id*. The district court, acting on Contemnors' notice, entered final judgment, from which they appealed to the Third Circuit. *Id*. A divided panel of Third Circuit affirmed in part and reversed in part. App.4a-5a. Pertinent here, the panel majority reversed dismissal of Contemnors' TVPA and FLSA claims against Petitioner Lackawanna Recycling Center, Inc. ("LRCI"), which, consequentially, resulted in the reversal of dismissal of Contemnors' Pennsylvania Minimum Wage Act, RICO, and unjust enrichment claims against LRCI. *Id*. The dissent, in contrast, applying fundamental cannons of statutory construction to the plausible allegations, would have affirmed dismissal of Contemnors' claims. App.49a-50a. The Third Circuit then denied LRCI's timely petition for rehearing. App.157a.

REASONS FOR GRANTING THE PETITION

I. THE THIRD CIRCUIT PANEL MAJORITY ELIMINATED THE ESSENTIAL ELEMENT OF COERCION FROM A STATUTE DESIGNED TO PROTECT ACTUAL VICTIMS OF HUMAN TRAFFICKING AND INVOLUNTARY SERVITUDE.

To have a TVPA claim, there must be coercion. *See* 18 U.S.C. § 1589(a); *Muchira v. Al-Rawaf*, 850 F.3d 605, 622-23 (4th Cir. 2017).

The panel majority concluded that Contemnors' complaint states a claim under the TVPA's "abuse of law" clause. *See* 18 U.S.C. §§ 1589(a)(3), (b). The majority acknowledged that, to state that claim, Contemnors had to plausibly allege first, that their work at the recycling facility was obtained through an abuse of law and legal process and, second, that defendants knew, or recklessly disregarded, the fact that their labor was obtained through unlawful means. App.23a-24a. But the majority then engaged in judicial legerdemain to recast Contemnors' complaint to infer non-existent allegations to support the claim, including non-existent and essential coercion, while committing a fatal statutory construction error in the process.

Contemnors' complaint lacks any allegations, no matter how generously construed, that plausibly satisfy the elements of Contemnors' TVPA "abuse of law" claim. First, there is no plausible allegation Contemnors worked at the recycling facility because of an abuse of law. Contemnors were not debtors in prison and were not ordered to pay their creditors. Instead, it is an incontrovertible fact, grounded in state law,

that Contemnors were incarcerated because they chose not to pay a purge amount that the state court determined, beyond a reasonable doubt, they had the present ability to pay. Contemnors did not have to go to prison —they voluntarily chose to do that. Contemnors did not have to participate in the discretionary work release program at all—they voluntarily chose to do that too. And it is indisputable that the work release program was not designed to provide Contemnors with an opportunity to earn money to purge their contempt. The work release program, instead, "fills gaps in local correctional systems and addresses local needs through expansion of punishment and services to the court." 42 Pa.C.S. § 9803.

Second, Contemnors do not, and cannot, allege that defendants knowingly benefited from an abuse or law, or a "venture" that they "knew or should have known [was] engaged in an act in violation of" the TVPA. 18 U.S.C. §§ 1589(b), 1595(a); *Muchira*, 850 F.3d at 622-23. As explained by the panel dissent, the majority engaged in pure speculation by "infer[ring]" that Contemnors would not choose to work in the allegedly dangerous conditions of the Center if they could pay their way to freedom. App.25a, 57a. There is no allegation in Contemnors' complaint, nor could there be, that the state court erred in setting the purge amount. If there was such error, moreover, it could be corrected by the state courts at any time. *See* 23 Pa.C.S. § 4352(a).

The panel majority, on its way to erroneously equating Contemnors with debtors seeking to pay their way out of debtors' prison, and speculating about their choices despite the allegations of the complaint, concluded that Contemnors "were <u>legally</u> unable to have their support orders modified or terminated for

changed circumstances stemming from incarceration for nonpayment of support." App.13a (emphasis added). That is a flawed construction of the state statute. A petition for modification of a support order "may be filed at any time and shall be granted if the requesting party demonstrates a substantial change in circumstances." 23 Pa.C.S. § 4352(a) (emphasis added). *See also* 23 Pa.C.S. § 4352(e) ("modification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition."). True, incarceration for nonpayment of child support is not a qualifying event, in and of itself, for modification of a child support award. *See* 23 Pa.C.S. § 4352(a.2). That is because the purge amount is set before surrender and calculated on the present ability to pay. But incarceration does not preclude a petition for modification based upon alleged changed financial circumstances following incarceration—the very changed circumstances Contemnors asserted through briefing but never alleged in their complaint. Indeed, if the panel majority's construction of the statute were correct, it would render the state statute unconstitutional, as previously determined by the Pennsylvania Supreme Court. *See Nicholson v. Combs*, 703 A.2d 407, 416-417 (Pa. 1997) ("Because failure to comply with a support order can lead to incarceration, the court must be able to reduce the amount if the payor establishes an inability to pay."). It is undisputed that Contemnors never availed themselves of that statutory relief and the majority committed a clear error of law by concluding that

such relief was not available to them once incarcerated.

The law only requires a court to draw reasonable inferences from allegations and does not require a court to accept every strained inference a plaintiff may aver in a complaint. *See Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013). The panel majority's speculation that knowledge of the Center's conditions allows a strained inference of knowledge of an abuse of a law stretches credulity. Contemnors do not allege facts that would justify any inference, strained or otherwise, that: (i) LRCI knew that Contemnors could not pay their respective purge amounts when sentenced; (ii) LRCI knew of the supposed changes following incarceration to each Contemnor's individual financial circumstances; or (iii) LRCI knew Contemnors could not seek redress for their unpleaded changed circumstances through the applicable statutory regime. The TVPA's knowledge requirement demands much more than an awareness of difficult working conditions. Indeed, as explained by the panel dissent, the decisions cited by Contemnors and their *amici*, wherein knowledge allegations were deemed adequate, evidence the chasm between Contemnors' allegations with respect to LRCI in this case and those that establish the requisite knowledge. App.59a (discussing *Ricchio v. McLean*, 853 F.3d 553, 555-56 (1st Cir. 2017) (summarizing allegations in complaint against alleged venture defendants) and *Bistline v. Parker*, 918 F.3d 849, 874-75 (10th Cir. 2019) (same)).

The panel majority, as demonstrated by both *Ricchio* and *Bistline*, ignored the kind of extraordinary and unusual circumstances other circuit courts have concluded were necessary to infer knowledge

for TVPA claims and, as concluded by the dissent, turns the TVPA's goal of "effectuat[ing] the constitutional prohibitions against slavery and involuntary servitude" into an employment action. *Muchira*, 850 F.3d at 625.

II. CONTEMNORS ARE INCARCERATED CONTEMNORS, NOT EMPLOYEES, UNDER THE BEST READING OF THE FLSA.

Contemnors, as lawfully imprisoned civil detainees in the custody of the Lackawanna County Prison, were not, as a matter of law, FLSA "employees" while working at the Center. *See* 29 U.S.C. § 203 (defining "employee"). The Third Circuit panel majority applied the traditional "economic reality test" to allow Contemnors' claim that they were FLSA employees to proceed because they are "non-convicted inmates" working outside of the prison at the Center. App.35a.[1] But the majority's premature leap to the "economic reality test" fails to start with, and first consider, the text of the FLSA at the time Congress enacted the statute and the technical meaning of the word "employee." App.60a-67a. *See Bostock v. Clayton Cty., Ga.*, ___ U.S. ___, 140 S. Ct. 1731, 1738, 207 L.Ed.2d 218 (2020) ("If judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we

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[1] The panel majority's decision is devoid of any explanation for the "non-convicted" moniker. An "inmate" ordinarily "denote[s] one who is deprived of liberty and held in custody." *See* GARNER'S DICTIONARY OF LEGAL USAGE, at 708-09. Regardless of how they got there, it is undisputed that Contemnors were lawfully jailed inmates and there is no statutory distinction between convicted and non-convicted inmates for purposes of the FLSA.

would risk amending statutes outside the legislative process reserved for the people's representatives.").

The panel dissent's analysis, starting with, and grounded in, fundamental cannons of statutory construction, App.60a-67a, comes to the correct conclusion—Contemnors cannot be "employees" under the FLSA because Contemnors are in custody and their work is inextricably tied to their incarceration. The genesis of Contemnors' work is their custody. The prison does not act as Contemnors' employer, but as their caretaker. Contemnors are detainees in the prison's custody, not its employees. Contemnors are not persons working for salary or wages, but instead are able to voluntarily participate in a rehabilitative program designed to benefit both prisoners and the community. It makes no difference then, as a matter of statutory construction, whether that work was inside or outside the prison because there is nothing in the text of the FSLA or the original understanding of the term "employee" that suggests work involving a third party or taking place outside the prison grounds coverts a prisoner's status into one of an employee in a formal employment relationship. Whether inside or outside the prison, Contemnors remained inmates subject to state power that is inconsistent with the bargained-for exchange of labor which occurs in a true employer-employee relationship. App.67a (citing *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1325 (9th Cir. 1991)). Contemnors' work, in short, cannot be untethered from their status as individuals in custody for contempt.

Statutory construction necessitates the conclusion that Contemnors cannot be "employees" under the FLSA. But even if one unnecessarily turns to the

"economic reality test," the Third Circuit panel majority opinion never explains why the D.C. Circuit's decision in *Henthorn v. Dep't of Navy*, 29 F.3d 682, 686-87 (D.C. Cir. 1994), relied upon by the district court, is "too narrow and rigid to serve the FLSA's purposes." App.35a. True, prior Third Circuit decisions had identified a number of additional indicia of traditional, free-market employment, as the majority decision notes. App.32a-34a (discussing *Enterprise Rent-A-Car Wage & Hour Employment Practices Litigation*, 683 F.3d 462 (3d Cir. 2012) and *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983)). But identification of additional indicia is not at all inconsistent with *Henthorn*'s conclusion that some indicia are more than indicators: they are prerequisites to, or essential elements of, a prisoner's claim that a non-prison entity is an FLSA employer. *See Henthorn*, 29 F.3d at 686-87. Those prerequisites, or what a prisoner must allege to state a FLSA claim against a non-prison entity, are: (1) the prisoner performed the work at issue without legal compulsion; and (2) compensation for the work was set and paid by the non-prison entity. *Id.*

The panel majority, by labeling *Henthorn* "too narrow and rigid to serve the FLSA's purposes," appears to have concluded, without explanation, that a prisoner who cannot meet the two, foregoing prerequisites can nevertheless be an "employee" of a private entity by meeting other, additional indicia of employment. If so, that was error, because the two prerequisites as distilled by *Henthorn* create essential boundaries furthering the purposes of the FLSA that, outside of which, prisoners cannot be FLSA employees. The first prerequisite looks at the economic reality of

the relationship between the private entity and the prisoner indirectly by asking whether the prisoner is legally compelled to work at the facility operated by that entity. If the prisoner is legally compelled to work at the facility, then the prisoner is not protected by the FLSA because the prisoner is not "operat[ing] within the traditional employment paradigm." *Ndambi v. Corecivic, Inc.*, 990 F.3d 369, 372 (4th Cir. 2021). The prisoner, in such a case, is not "voluntarily selling his labor in exchange for a wage paid by an employer other than the prison itself." *Henthorn*, 29 F.3d at 686. The FLSA was never intended to protect a prisoner who is legally obligated to work because such a prisoner is not working in order earn wages to "maintain a standard of living" or "general well-being," those needs having been met by the prison. *Ndambi*, 990 F.3d at 373. As a result, a prisoner who is legally obligated to work "may not state a claim under the FLSA, for he is truly an involuntary servant to whom no compensation is actually owed." *Henthorn*, 29 F.3d at 686 (emphasis in original).

The second prerequisite focuses directly on the economic reality of the relationship between the prison and the putative private-entity employer and does so in a very practical and reasonable way. If the putative employer neither sets nor pays compensation to a prisoner, that putative employer is not the person or entity whose conduct must change to achieve the purposes of the FLSA. Unlike in work release programs where wages are set and paid by private entities, a private entity that neither sets nor pays prisoner compensation is not an "employer" whose actions can run afoul of the FLSA. The economic reality is that an entity that neither sets nor pays compensation

cannot be found to have set an hourly rate too low or otherwise paid too little.

The district court, for these reasons, did not err in applying the "straight-forward, common sense approach" taken by the D.C. Circuit in *Henthorn*. App.125a.

With respect to the first prerequisite, Contemnors do not allege that their work at the recycling center was freely contracted or voluntary. Contemnors, instead, expressly plead that they were "compelled" to begin working at the recycling center. App.126a. Contemnors, by expressly pleading that they were compelled to work at the recycling are not prisoners protected by the FLSA because they are not "operat[ing] within the traditional employment paradigm." *Ndambi*, 990 F.3d at 372.

With respect to the second prerequisite, Contemnors did not allege that their compensation was set and paid by a non-prison source (*i.e.*, by LRCI), but instead by the Authority and the County, which operates the prison. App.126a.

Contemnors' second amended complaint, in sum, failed both essential prerequisites for plausibly claiming that they were FLSA "employees" of LRCI.

Finally, the Third Circuit panel majority further erred in its reasoning that Contemnors were "employees" because "[t]hey needed money for a reason that the typical incarcerated person does not: to satisfy their contempt orders and secure their freedom from incarceration." App.40a. But that reasoning is readily debunked, as Contemnors were not debtors seeking to pay their way out of debtors' prison. Instead, it is an incontrovertible fact, grounded in state law, that

Contemnors were incarcerated because they chose not to pay a purge amount that the state court determined, beyond a reasonable doubt, they had the present ability to pay. Contemnors did not have to go to prison—they voluntarily chose to do that. And, if their circumstances changed, as Contemnors claimed through briefing but never pleaded, they had recourse with the state courts. The panel majority, moreover, offers no justification for its implicit attempt to distinguish between a "typical incarcerated person" and Contemnors, which, in any event, is distinction without a difference for purposes of Contemnors' FLSA claims in this case. That is because the "economic realty" is the same with respect to those criminally or civilly incarcerated. That is, just like those criminally incarcerated,

> [t]he proper starting point in a case such as this is the state's control over its civil detainees. Where the state provides the detainees' food, shelter, and clothing, gives permission for a detainee to be allowed the privilege of working, the state's absolute power over the detainee is a power that is not a characteristic of, but inconsistent with, the bargained-for exchange of labor which occurs in a true employer-employee relationship. (emphasis original).

Williams v. Coleman, 2012 U.S. Dist. LEXIS 181874, at *6 (E.D. Cal. Dec. 26, 2012), *aff'd*, 2013 U.S. App. LEXIS 16019 (9th Cir. Cal., Aug. 2, 2013) (emphasis original) (rejecting civil detainee's wage claim under the FLSA). *See also Ndambi*, 990 F.3d at 370 (affirming dismissal of former civil detainees who alleged they were owed wages under the FLSA for work performed

while detained, concluding that civil detainees in custodial detention are in detainer-detainee relationship that is outside the "traditional employment paradigm" the FLSA was enacted to protect).

CONCLUSION

The Court should grant this petition for a writ of *certiorari.*

Respectfully submitted,

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