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**In The**  
**SUPREME COURT OF THE UNITED STATES**  
**October Term 2022**

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**Cintas Corporation et al.,**  
***Applicants,***

**v.**

**Raymond Hawkins and Robert Lung, individually and on behalf of all**  
**others similarly situated,**  
***Respondents.***

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**Application for an Extension of Time Within Which**  
**to File a Petition for a Writ of Certiorari to the**  
**United States Court of Appeals for the Sixth Circuit**

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**APPLICATION TO THE HONORABLE**  
**JUSTICE BRETT M. KAVANAUGH AS CIRCUIT JUSTICE**

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July 13, 2022

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## **PARTIES TO THE PROCEEDING**

Applicants Cintas Corporation, the Board of Directors of Cintas Corporation, the Investment Policy Committee, and Scott D. Farmer were defendants-appellants in the proceeding below.

Respondents Raymond Hawkins and Robin Lung were plaintiffs-appellees in the proceeding below.

## **STATEMENT PURSUANT TO RULE 29.6**

Cintas Corporation (“Cintas”) has no parent corporation, and no publicly held corporation has 10 percent or greater ownership in Cintas.

The Board of Directors of Cintas has no parent corporation, and no publicly held corporation has 10 percent or greater ownership in it or in Cintas.

The Investment Policy Committee is a committee of individuals at Cintas. It has no parent corporation, and no publicly held corporation has 10 percent or greater ownership in it or in Cintas.

Scott D. Farmer is an individual.

## **APPLICATION FOR EXTENSION OF TIME**

Pursuant to this Court’s Rule 13.5 and 28 U.S.C. § 2101(c), Applicants Cintas Corporation, the Board of Directors of Cintas Corporation, the Investment Policy Committee, and Scott D. Farmer (together, “Applicants”) hereby request a 45-day extension of time within which to file a petition for a writ of certiorari, to and including September 9, 2022.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is the decision of the United States Court of Appeals for the Sixth Circuit in *Hawkins v. Cintas Corp.*, No. 21-3156 (6th Cir. Apr. 27, 2022), a copy of which is attached as Exhibit A.

## **JURISDICTION**

The United States Court of Appeals for the Sixth Circuit entered judgment on April 27, 2022. This Court’s jurisdiction will rest on 28 U.S.C. § 1254. Under Rules 13.1, 13.3, and 30.1 of this Court, a petition for a writ of certiorari is due to be filed on or before July 26, 2022. In accordance with Rule 13.5, Applicants have filed this application more than 10 days in advance of that due date.

## **REASONS JUSTIFYING AN EXTENSION OF TIME**

Applicants respectfully request a 45-day extension of time, to and including September 9, 2022, to file a petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit in this case. An extension is warranted because of the importance of the issues presented and

undersigned counsels' need for additional time to prepare a petition that will assist this Court in deciding whether to grant certiorari.

1. This case concerns the enforceability of agreements to arbitrate claims arising under Section 502(a)(2) of the Employee Retirement Insurance Security Act (ERISA), 29 U.S.C. § 1132(a)(2).

2. Respondents are former employees of Cintas who participated in the Cintas Partners' Plan (the "Plan"), an ERISA-governed 401(k) retirement plan. Respondents entered into employment agreements with Cintas in which they agreed that "all of [their] rights or claims arising out of or in any way related to [their] employment with [Cintas], such as rights or claims arising under ... the Employee Retirement Income Security Act" shall be resolved through arbitration. Ex. A at 4.

3. Respondents have filed a class-action complaint against Applicants, claiming that Applicants breached their fiduciary duties under ERISA by allegedly selecting high-cost investment options for the Plan and allowing the Plan to pay excessive recordkeeping fees. The relief they seek includes damages to be allocated among participants' individual accounts in the Plan, in proportion to the accounts' losses. Applicants moved to compel arbitration of the claims in accordance with the arbitration provisions in Respondents' employment agreements.

4. The United States District Court for the Southern District of Ohio denied Applicants' motion to compel arbitration. It concluded that Respondents' agreements to arbitrate rights or claims arising under ERISA was unenforceable

because the Plan was not a party to those agreements, and because Plaintiffs were bringing their claims on behalf of the Plan, not on behalf of themselves. *See* Ex. A at 5. The Sixth Circuit affirmed. It held that “[a]lthough § 502(a)(2) claims are brought by individual plaintiffs, it is the plan that takes legal claim to the recovery, suggesting that the claim really ‘belongs’ to the Plan. And because § 502(a)(2) claims ‘belong’ to the Plan, an arbitration agreement that binds only individual participants cannot bring such claims into arbitration.” *Id.* at 10.

5. The Sixth Circuit’s decision warrants review. It is irreconcilable with this Court’s recent decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1273 (U.S. June 15, 2022), and with this Court’s other decisions regarding the enforceability of arbitration agreements under the Federal Arbitration Act (FAA), 9 U.S.C. § 2. In *Viking River*, this Court considered California’s Labor Code Private Attorneys General Act (PAGA), which allows certain individuals to bring a “representative action” as an “agent or proxy of the State.” Slip op. at 3. This Court held that an individual’s arbitration agreement, which included a waiver provision stating that the parties could not bring any dispute as a representative action under PAGA, was enforceable even though the State was not a party to the agreement. *See id.* at 15–20. In doing so, it rejected the notion that “single-agent, single-principal representative suits are inconsistent [with] the norm of bilateral arbitration.” *Id.* at 15. That is the very notion on which the Sixth Circuit’s decision relies: it reasoned that Respondent’s agreements to arbitrate were unenforceable due to “the representative nature of § 502(a)(2) claims.” Ex. A at 9. That reasoning cannot be

squared with *Viking River*. It is also at odds with numerous decisions in which other courts of appeals have held that ERISA claims are subject to arbitration under the FAA. See, e.g., *Prime Healthcare Servs.-Landmark LLC v. United Nurses & Allied Prof'l, Loc. 5067*, 848 F.3d 41, 48 (1st Cir. 2017); *Bird v. Shearson Lehman/Am. Express, Inc.*, 926 F.2d 116, 122 (2d Cir. 1991); *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 1122 (3d Cir. 1993); *Kramer v. Smith Barney*, 80 F.3d 1080, 1084–85 (5th Cir. 1996); *Arnulfo P. Sulit, Inc. v. Dean Witter Reynolds, Inc.*, 847 F.2d 475, 479 (8th Cir. 1988); *In re Becker*, 993 F.3d 731, 733 (9th Cir. 2021); *Williams v. Imhoff*, 203 F.3d 758, 767 (10th Cir. 2000). The Sixth Circuit's decision, if allowed to stand, will have significant impact because it will undermine the enforceability of agreements to arbitrate ERISA claims nationwide.

6. Undersigned counsel respectfully submits that there is good cause for a 45-day extension of time to file a petition for writ of certiorari. This Court's decision in *Viking River* was issued 49 days after the Sixth Circuit's judgment in this case, and the undersigned counsel thus require additional time to evaluate the issues here in light of *Viking River* and to prepare a petition that will assist the Court in considering those issues. In addition, undersigned counsel of record has client obligations in other matters that would make it difficult to prepare a petition for certiorari by the current deadline. Those other matters include the preparation of responses to dispositive motions and to pre-trial motions in *Archer Daniels Midland*

*Co. et al. v. American Liberty M/T*, No. 2:19-cv-10525-EEF-JVM in the Eastern District of Louisiana, currently due on July 26, 2022.

### CONCLUSION

For these reasons, Applicants respectfully request an extension of 45 days, to and including September 9, 2022, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Robert N. Hochman

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