IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

SIGNET BUILDERS, INC.,

Applicant,

v.

JOSE AGEO LUNA VANEGAS,

Respondent.

APPLICATION TO THE HON. AMY CONEY BARRETT 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 SEVENTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Signet Builders, Inc., hereby moves for an extension of time of 30 days, to and including February 9, 2023, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be January 10, 2023.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Seventh Circuit rendered its decision on August 19, 2022 (Exhibit 1), and denied a timely petition for rehearing on October 12, 2022 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves the Fair Labor Standards Act ("FLSA") and exemptions from its overtime-pay requirement. FLSA requires employers to pay overtime to covered employees when those employees work more than 40 hours in a week, 29 U.S.C. §207(a)(1), but one of the many statutory exemptions provides that

the overtime-pay requirement does not apply to "any employee employed in agriculture," *id.* §213(b)(12).

3. FLSA defines agriculture broadly "in both a primary and secondary sense." *Bayside Enterprises, Inc. v. N.L.R.B.*, 429 U.S. 298, 300 (1977). The primary sense of the term "includes farming in all its branches ... includ[ing] the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities ..., [and] the raising of livestock, bees, fur-bearing animals, or poultry." 29 U.S.C. §203(f). And, because FLSA's "agricultural exemption was intended to 'embrace the whole field of agriculture,'" *Bills v. Cactus Fam. Farms, LLC*, 5 F.4th 844, 847 (8th Cir. 2021) (quoting *Maneja v. Waialua Agr. Co.*, 349 U.S. 254, 260 (1955)), FLSA's definition of "agriculture" also includes "any practices … performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. §203(f).

4. Though this Court once held that FLSA's exemptions had to "be narrowly construed," *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945), that is no longer the law. In *Encino Motorcars, LLC v. Navarro*, this Court explicitly "reject[ed] this principle as a useful guidepost for interpreting the FLSA." 138 S.Ct. 1134, 1142 (2018). Recognizing that FLSA's exemptions "are as much a part of the FLSA's purpose as the overtime-pay requirement," this Court held that courts have "no license to give [FLSA's] exemption[s] anything but a fair reading." *Id.* In that decision and others, "this Court has made clear that statutory exceptions are to be

read fairly, not narrowly, for they are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect." *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S.Ct. 2172, 2181 (2021) (quotation marks omitted). The court of appeals simply disregarded this recent and emphatic precedent in favor of a rule of narrow construction drawn from the bad old days of statutory construction when remedial statutes were interpreted broadly and exemptions construed narrowly.

5. This case turns on whether plaintiff was employed in agriculture and thus exempt from FLSA's overtime-pay requirement. Plaintiff worked for Signet "to build 'livestock confinement structures' on farms in several states." *Luna Vanegas v. Signet Builders, Inc.*, 554 F.Supp.3d 987, 988 (W.D. Wis. 2021). A citizen of Mexico, Luna Vanegas "worked for Signet under an H-2A guestworker visa, which allows citizens of other countries to perform agricultural work in the United States on a temporary basis." *Id.* at 989; *see also Cohee v. Glob. Horizons Inc.*, 310 F. App'x 579, 581 (4th Cir. 2009) ("Foreign agricultural workers are eligible to enter the United States on a temporary basis through the H-2A visa program."). Alleging that he had been denied overtime pay due him under FLSA, Luna Vanegas sued Signet and sought conditional certification "of a collective of all Signet workers who worked under a guestworker visa." *Luna Vanegas*, 554 F.Supp.3d at 988. Signet moved to dismiss, arguing that Luna Vanegas had been an "employee employed in agriculture" and thus fell within FLSA's agricultural exemption. 29 U.S.C. §213(b)(12).

6. The district court granted Signet's motion to dismiss. While the parties agreed that Luna Vanegas's work did not constitute agriculture in its primary sense, they differed as to whether it constituted agriculture in the FLSA's secondary sense of the term. Siding with Signet, the district court reasoned that Luna Vanegas was exempt because his "work building livestock confinement structures" obviously occurred on a farm and "was in conjunction with 'the raising of livestock,' one of the core farming operations" under the statute. *Luna Vanegas*, 554 F.Supp.3d at 990. The court found that conclusion followed from *Maneja v. Waialua Agricultural Co.*, 349 U.S. 254, 258 (1955), where this Court concluded that the work of "mechanics, electricians, welders, carpenters, plumbers and painters" that serviced "equipment used in agricultural functions" on a sugarcane plantation came within FLSA's agricultural exemption. Like those workers, "Luna Vanegas worked with materials used directly for an agricultural purpose: confining livestock." *Luna Vanegas*, 554 F.Supp.3d at 990. Under the logic of *Maneja*, then, the district court concluded plaintiff had worked "on a farm as an incident to or in conjunction with … farming operations." 29 U.S.C. §203(f). And since plaintiff had not "shown that § 203(f) requires anything more than what it says," *Luna Vanegas*, 554 F.Supp.3d at 993, the court granted Signet's motion to dismiss.

7. The Seventh Circuit reversed. In clear disregard of *Encino Motorcars*, and harkening back to earlier discarded precedents, the Seventh Circuit held that "Like all FLSA exemptions, the agricultural exemption must be 'narrowly construed against the employer seeking to assert [it].'" *Luna Vanegas v. Signet Builders, Inc.*,

46 F.4th 636, 641 (7th Cir. 2022) (quoting 29 C.F.R. §780.2). In reaching that conclusion, the Seventh Circuit invoked Department of Labor regulations, which, in turn, expressly invoked abrogated cases embracing the narrow-readings principle, and insisted that FLSA's agricultural exemption must be "limited to those who come plainly and unmistakably within [its] terms and spirit." *Id.* (quoting 29 C.F.R. §780.2; alteration in original). Concluding that "the applicability of the exemption" to Luna Vanegas had not been established "beyond debate," the Seventh Circuit gave FLSA's agricultural exemption a narrow reading and reversed the district court's judgment. *Id.* at 639.

8. Signet timely filed a petition for rehearing en banc on September 16, 2022, emphasizing, *inter alia*, the panel decision's clear disregard for *Encino Motorcars*. The Seventh Circuit denied that petition on October 12, 2022.

9. While Signet is still working with newly retained appellate counsel to formulate a petition, Signet anticipates filing a petition that highlights the clear conflict between the decision below and this Court's decision in *Encino Motorcars*, the decisions of other circuits giving a fair (and broader) reading of the secondary agriculture exemption, and the judgment of immigration officials that Luna Vanegas and members of the class he seeks to represent are "foreign agricultural workers" entitled to H-2A visas.

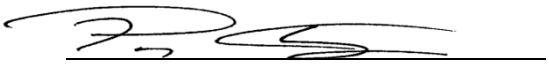
10. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below and was only recently retained. Applicant's counsel requires additional time to review the record and prior proceedings in this case in order to

prepare and file a petition for certiorari that best presents the arguments for this Court's review.

11. Mr. Clement also has substantial briefing obligations in this Court and others between now and January 10, 2023, including an opening brief in *BMC Software, Inc. v. Int'l Bus. Machs. Corp.*, No. 22-20463 (5th Cir.) due on January 9, 2023; a petition for writ of certiorari in *Gen. Motors, LLC v. FCA US*, No.___ (U.S.), currently also due on January 9, 2023; a reply brief in *Maine Lobstermen's Association v. National Marine Fisheries Service, et al.*, No. 22-5238 (D.C. Cir.) due on January 10, 2023; and a motion for summary judgment in *US Dominion Inc., Dominion Voting Systems, Inc., and Dominion Voting Systems Corporation v. Fox News Network, LLC*, No. N21C-03-257 (Del. Super. Ct.) due on January 10, 2023.

WHEREFORE, for the foregoing reasons, Signet requests that an extension of time to and including February 9, 2023, be granted within which Signet may file a petition for a writ of certiorari.

Respectfully submitted,



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