No. 23-479

IN THE

Supreme Court of the United States

JASWINDER SINGH

Petitioner,

v.

UBER TECHNOLOGIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner Jaswinder Singh submits this supplemental brief in support of his pending petition for a writ of certiorari.

1. After Petitioner filed his petition, the U.S. Court of Appeals for the Second Circuit decided an appeal involving the same issue addressed by the Third Circuit below—whether rideshare drivers belong to a class of workers engaged in interstate commerce under the Federal Arbitration Act's Section 1 exemption. *Aleksanian v. Uber Techs. Inc.*, No. 22-98-cv, 2023 U.S. App. LEXIS 30196, at *1 (2d Cir. Nov. 14, 2023). The district court below had ruled that the Uber rideshare drivers did not belong to such a class of workers and, therefore, the FAA exemption did not cover the drivers' arbitration agreements. *Id.* at *3. The district court also denied the drivers' motion to take discovery on the issue. *Id.* Rather than decide the appeal on the merits, the Second Circuit vacated the district court's ruling and ordered the district court to permit "limited discovery addressing the question of whether the Drivers belong to a class of workers engaged in foreign or interstate commerce" before deciding a renewed motion to compel arbitration from Uber. *Id.* at *8 (internal quotation marks omitted). In doing so, the Second Circuit followed the Third Circuit's similar decision of the first appeal in the instant matter, *Singh v. Uber Techs. Inc.*, 939 F.3d 210 (3d Cir. 2019) (*Singh I*), where the Third Circuit ordered that discovery be taken on the same issue prior to the district court hearing Uber's renewed motion to compel arbitration. *Id.* at *5-9.

As explained herein, the Second Circuit's decision in *Aleksanian* demonstrates the problems the lower courts are encountering and creating when addressing FAA exemption questions, which are undermining the benefits this Court has determined arbitration provides to parties, speedy resolution and limited expense.

2. This Court has repeatedly extolled speedier process and lowered costs as benefits of arbitration. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995); (arbitration "is usually cheaper and faster than litigation"); *Preston v. Ferrer*, 552 U.S. 346, 357-58 (2008) ("A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results.'"(quoting *Mitsubishi Motors Corp. v. Soler Chrysler Plymouth, Inc.*, 473 U.S. 614, 633 (1985)); *AT&T Mobility LLC v. Concepcion*, 563 U.S. at 345 ("the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution.") (citations omitted).

This Court has determined that Congress intended the FAA to provide these benefits to parties and has considered the maintenance of these benefits when interpreting the FAA to avoid, where possible, "unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it." *Allied-Bruce*, 513 U.S. at 275. In *Allied-Bruce*, this Court determined whether FAA Section 2, which provides for the enforceability of an arbitration clause in a "contract evidencing a transaction involving commerce," requires "only that the transaction … must turn out, in fact, to have involved interstate commerce" or that the parties contemplated substantial interstate commerce when forming the contract. 513 U.S. at 277-78.

This Court rejected the second interpretation of Section 2, in part, because it "invites litigation about what was, or was not, 'contemplated'" and, therefore, "risks the very kind of costs and delay through litigation … that Congress wrote the Act to help the parties avoid[.]" *Id.* at 278. And in *Circuit City Stores v. Adams*, this Court rejected a construction of Section 1 of the FAA that would introduce "considerable complexity and uncertainty … into the enforceability of arbitration agreements in employment contracts" based, in part, because it would undermine the benefits provided by the FAA. 532 U.S. 105, 123 (2001).

The process developed by the Second Circuit in *Aleksanian*, the Third Circuit in the instant matter, and in other circuits for determining whether the FAA exemption covers an arbitration agreement thoroughly undermines the benefits this Court believes the FAA provides parties to a dispute. The Second Circuit, and the Third Circuit in *Singh I* before it, ordered discovery that is limited only in scope, requiring it to be focused on whether Uber's rideshare drivers belong to a class of workers engaged in interstate commerce under the FAA exemption. *Aleksanian*, 2023 U.S. App. LEXIS 30196, at *8-9; *Singh I*, 939 F.3d at 227-28. Neither court installed any other safeguards to ensure the speedy resolution of the question or to limit the resources spent in answering it. Nor could they have as courts do not have authority to proceed under the FAA's provisions, such as Section 4's procedures for resolving a dispute about the existence of an enforceable arbitration agreement, until it determines the threshold question of whether the contract is exempt under Section 1, which provides that "*nothing*" in the FAA shall apply to exempt contracts. 9 U.S.C. § 1. As a function of the lack of clarity on the scope of the Section

1 exemption, the Second and Third Circuits ordered extensive discovery on the issue.

In *Aleksanian*, the Second Circuit provided a non-exhaustive list of topics that discovery on this issue might include:

> Uber's policies regarding interstate trips; the potential penalties and costs of declining interstate trips; Uber's revenue from interstate trips; the average number of interstate trips Uber drivers take over various time periods (such as a week, a month, or a year); the median number of interstate trips for Uber drivers over various time periods; what percentage of Uber drivers take interstate trips over various time periods; how often Uber drivers decline interstate trips; and any other relevant information.

Aleksanian, 2023 U.S. App. LEXIS 30196, at *8-9 (comparing its list with the Third Circuit's non-exhaustive list of similarly broad topics for discovery on the FAA exemption issue in *Singh I*, 939 F.3d at 227-28).

The need for this discovery, due to the lack of clarity about the standard for what constitutes "engagement in interstate commerce" under the FAA exemption, has significantly delayed resolution of the instant action and will similarly delay the *Aleksanian* matter. The plaintiff in the instant matter initiated the action against Uber in April 2016. JA 292. The Third Circuit issued *Singh I* in September 2019 and the district court below did not resolve Uber's renewed motion to compel arbitration until

November 23, 2021, the appeal of which was not decided until April 2023. App. 2a, 76a. The drivers in *Aleksanian* initiated their action against Uber in November 2019 and now embark on discovery that will culminate in a district court decision and appeal, extending the case likely by multiple years. *See Aleksanian*, 2023 U.S. App. LEXIS 30196, at *2-3.

These delays are not unique to rideshare driver cases but are endemic to cases where FAA exemption coverage is disputed. *See, E.g., Fraga v. Premium Retail Servs., Inc.*, 2023 U.S. Dist. LEXIS 215862, at *25-26 (D. Mass. Dec. 5, 2023). In *Fraga*, the question of whether the FAA exemption covered a merchandiser who transported point-of-purchase material originating from out-of-state to intra-state retail stores returned to the district court after the First Circuit vacated its initial decision on the issue and remanded for further factfinding. *Fraga v. Premium Retail Servs.*, 61 F.4th 228, 237, 242 (1st Cir. 2023). The district court granted the renewed motion to compel arbitration but noted the incongruity between the asserted benefits of arbitration and the cost of the process for determining whether the FAA covers an arbitration contract. *Fraga*, 2023 U.S. Dist. LEXIS 215862, at *25-26. "What ought to be a quick preliminary determination is becoming the main event." *Id.* at *25. "Two and one half years have passed, resulting in three full scale judicial opinions and a two-day evidentiary hearing with 6 witnesses and hundreds of pages of exhibits (and [the plaintiff] may yet appeal this [c]ourt's determination)." *Id.* at *25.

3. If the question of whether any given type of worker belongs to a "class of workers engaged in interstate

commerce" under the FAA exemption could be answered once and for all in a single case involving such a worker, one could argue that the extensive delay and costs incurred due to the discovery conducted to answer the question is worth it in the long run to put the question to rest for all future workers in every region of the country covered by a circuit court that decides it. But that cannot be, because the courts are deciding the issue based on facts developed during discovery. Though the courts are making determinations about a "class" of workers under the FAA, the decisions are not binding on any workers but the parties in each case. The next worker who files an action may succeed in developing a more favorable factual record than the worker and counsel in an earlier case. Or the facts developed in an earlier case may no longer be relevant or true for the worker, company, or period at issue in a later case. For example, *none* of the facts the parties in *Aleksanian* develop to answer the non-exhaustive list of inquiries the Second Circuit found relevant to deciding the FAA exemption issue are written in stone. 2023 U.S. App. LEXIS 30196, at *8-9. Uber's policies regarding interstate trips, whether there are consequences for declining to perform an interstate trip, Uber's revenue from interstate trips, *inter alia*, are all subject to change.

To settle the question for all drivers now and in the future, the decision must turn not on the minutiae that *Aleksanian* zeroed in on but rather the inherent quality(ies) of the class of workers at issue, which are not subject to change by any given employer or fluctuations in consumer demand. This Court should grant the petition to issue such a decision and, in doing so, make clear that the language of the FAA exemption means what it says—a "class of workers" need only be "engaged in interstate commerce"

to be covered rather than primarily or predominantly engaged. Specifically, this Court should hold that a class of workers that, as a unit, transports passengers across state borders of millions of times per year is a "class of workers engaged in interstate commerce" under the FAA exemption regardless of how many intra-state trips they happen to also perform.

CONCLUSION

For the foregoing reasons, and those stated in the petition for a writ of certiorari, this Court should grant the petition for certiorari.

Respectfully submitted,

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