No. 23–769

In The
Supreme Court of the United States

LYFT, INC.,

Petitioner,

v.

MILLION SEIFU,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Viking River Cruises, Inc. v. Moriana, 596 U.S. 639 (2022), announced a rule requiring the arbitration of individual PAGA claims and the dismissal of non-individual PAGA claims. The dismissal rule is grounded in the FAA and therefore amounts to a federal rule of decision. Pet. 14–19. But as Lyft's petition explained, Pet. 4–5, 17–18, California courts have rendered the dismissal rule a nullity, insisting that state law governs (not the FAA) and that non-individual claims should be litigated in court (not dismissed), *Adolph v. Uber Techs., Inc.*, 532 P.3d 682, 689–93 (Cal. 2023); App. 14–19.

Seifu's brief in opposition underscores the need for certiorari. Seifu and Lyft disagree on what this Court held in *Viking River*, a dispute that will vex lower courts and that only this Court can resolve.

Seifu argues that California law governs, thereby undermining *Viking River* and its application of the FAA to PAGA. Seifu's position channels the views of California courts, which have long sought to establish an FAA-free zone. *E.g.*, Pet. 3–5, 10–11. The deleterious consequences fall on workers, consumers, and businesses, *see* Pet. 20–22, 29–30, as Seifu does not deny. California courts' refusal to dismiss non-individual claims (as *Viking River* commands) threatens to "undermine the benefits of arbitration for everyone." *Johnson v. Lowe's Home Ctrs., LLC*, 93 F.4th 459, 466 (9th Cir. 2024) (Lee, J., concurring). The FAA provides the path forward, as Lyft has

explained to lower courts, where Lyft preserved its federal preemption claim here. Existing arbitration agreements requiring one-on-one arbitration must be prioritized over state representative proceedings that trample arbitration rights. Only this Court's intervention can safeguard the FAA.

ARGUMENT

I. Certiorari should be granted because the decision below conflicts with this Court's FAA precedent.

A. *Viking River* requires the dismissal of non-individual PAGA claims as a matter of federal, not state, law.

Lyft's petition explained (at 14–19) that *Viking River*'s rule (which requires the dismissal of non-individual claims) implemented the FAA and is thus a federal (not state) rule of decision binding on all courts. In adjudicating disputes arising under federal law (like the FAA), this Court creates federal rules of decision that protect and give meaning to the federal rights and remedies it recognizes. Pet. 14–16.

Seifu disagrees, claiming *Viking River* instead fashioned California law. Opp'n 13, 18. But this Court generally does not resolve state-law issues without saying so. *See Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 198 (2001). And Part IV of *Viking River* did not say the Court was announcing a state-law holding. Instead, the Court invoked "our holding"

about FAA preemption to mandate the dismissal rule that followed. Pet. 15.

Seifu points to other statements in *Viking River* about what PAGA allows, or disallows, as evidence that the Court was enunciating state law. Opp'n 15–16. But those statements merely set up the necessary comparison between state and federal law that is always required in preemption analysis. Pet. 17–18. Seifu also points to the Court's statement that non-individual "claims may not be dismissed simply because they are 'representative.'" Opp'n 16 (citation omitted). That does not mean those claims may not be dismissed *at all*. Quite the contrary, since this Court commanded the dismissal of non-individual claims in *Viking River*, 596 U.S. at 663. The point is that the Court did so based on FAA preemption principles, not state law.

Announcing state law rules *sub silentio* would reduce respect for state courts and cross the line into giving advisory opinions. Even Seifu acknowledges those are important principles. Opp'n 14. The Court should not construe *Viking River* to presume encroachment on state law.

Even if *Viking River* could be read as creatively fashioning state law, it would confirm the need for certiorari. Only this Court can resolve disputes over the meaning of its opinions. Seifu downplays the need for certiorari because *Adolph*, 532 P.3d 682, has supposedly settled the law in California courts, Opp'n 15, and he distinguishes cases preceding *Adolph* as outdated, Opp'n 17–18. But a new basis for conflict recently emerged. The Ninth Circuit considered

precisely the arguments Lyft makes here, *e.g.*, Appellant's Reply Brief at 33–36, *Diaz v. Macy's W. Stores, Inc.*, No. 22–56209 (9th Cir. 2024), 2023 WL 5309930, and remanded so the district court could consider them, *Diaz v. Macy's W. Stores, Inc.*, No. 22-56209, 2024 WL 2098206, at *7 n.5 (9th Cir. May 10, 2024). Challenges to *Adolph* will proliferate until this Court scrutinizes it.

Seifu relies on the *Viking River* concurrences, Opp'n 14, 17, but they provide no support. Justice Sotomayor suggested California law governs and stated California courts could correct "this Court's understanding of state law." *Viking River*, 596 U.S. at 664 (Sotomayor, J., concurring). Yet no other Member of the Court wrote in agreement with her views. And Justice Barrett's concurrence merely (and properly) noted background disputes of state law (such as the scope of statutory standing). *Id.* (Barrett, J., concurring in part and concurring in the judgment). She did not reject the majority's reliance on FAA preemption to craft its disposition of dismissal; she simply would not have reached that issue.

Tellingly, Seifu offers no response to Lyft's core point: *Viking River* could not have applied California law in disposing of non-individual claims since California courts denied the existence of such claims. Pet. 15–16. Until *Viking River*, "individual" and "non-individual" claims were unknown to California courts, which insisted PAGA claims were indivisible. *Id.* This Court should grant certiorari to confirm that, applying the FAA, all courts must dismiss non-individual claims.

B. The FAA preempts California's rule prohibiting the dismissal of non-individual PAGA claims.

1. *Interference with other arbitration contracts*. As Lyft's petition showed (at 20–23), the FAA preempts California's refusal-to-dismiss approach because it allows named plaintiffs to litigate in court disputes that other workers agreed to arbitrate. Like many companies, Lyft routinely agrees with workers to individually arbitrate *all* disputes, including PAGA disputes. Pet. 20–21. Non-individual claims, by definition, are collections of disputes involving workers *other than* named plaintiffs. *Viking River*, 596 U.S. at 646, 648–49. So litigating in court a named plaintiff's non-individual claim will necessarily adjudicate embedded disputes involving *other workers* who agreed to arbitration. This violates Lyft's arbitration agreements with those other workers. Pet. 20–23. Because those non-individual claims may not proceed without violating the FAA, they must be dismissed: California's contrary approach "interfere[s]" with arbitration contracts, *Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87, 98 (2017), and is therefore preempted, Pet. 21–23. *Viking River*'s dismissal rule must carry the day.

Seifu offers two sets of responses. Neither ameliorates the FAA violations we have described.

First, Seifu argues Lyft and drivers could agree to *arbitrate* non-individual claims if they prefer not to *litigate* them. Opp'n 21. That mistakes the issue. Whether a non-individual claim is litigated or

arbitrated, the named plaintiff controls that claim. *Viking River*, 596 U.S. at 645 n.2. But this claim consists of disputes between other workers and Lyft committed to one-on-one arbitration. Pet. 20–23. Neither Lyft nor the other workers have ceded control over resolving those disputes to the named plaintiff, much less waived contractual rights to individually arbitrate those disputes with each other.

Seifu acknowledges that litigating a non-individual claim will foreclose other workers from arbitrating individual disputes with Lyft. Opp'n 22. Indeed, this is precisely the point where the FAA intervenes (preempting California law) to vindicate other workers' contractual rights. Pet. 22–23.

Moreover, Seifu ignores *Lyft*'s arbitration rights. Pet. 22–23. If the named plaintiff's non-individual claim succeeds in court, other workers could rely on the resulting judgment *in their own non-PAGA claims* to establish Labor Code violations via offensive collateral estoppel. Pet. 21–22. Yet those non-PAGA claims are (again) disputes that Lyft and other workers committed to individual arbitration. Pet. 20–21.

Second, Seifu contends that *Adolph* does not violate the FAA because *Adolph* authorizes trial courts to stay non-individual claims pending the arbitration of individual claims and indicates the arbitral result could bind the courts in adjudicating the non-individual claims. Opp'n 21–22. But the possibility of *staying* non-individual claims does not cure the FAA violation. Whether or not non-individual claims are stayed, those claims encompass

disputes between Lyft and other workers committed to individual arbitration under separate arbitration agreements. *See* Pet. 20–22. *Adolph* requires those disputes to be litigated en masse in court via the non-individual claim following the arbitration of the individual claim (when the stay expires). 532 P.3d at 685–86, 692. That interferes with an individualized arbitral resolution, whether or not there is a temporary stay at some point.

2. *The severance rule*. Lyft has shown an additional reason why the FAA preempts California courts' prohibition on dismissing non-individual claims: under *Viking River*, applying the FAA completely severs individual from non-individual claims, but under *Adolph*, California courts tether those claims together to avoid dismissing an otherwise headless non-individual claim marooned in court. Pet. 23–24.

Adolph tethered individual claims to non-individual claims, indicating that arbitral findings concerning the former might apply when litigating the latter. 532 P.3d at 692–93. This tethering threatens to "tilt the stakes of arbitration for defendants and undermine the benefits of arbitration for everyone." *Johnson*, 93 F.4th at 466 (Lee, J., concurring). "Arbitrations for individual claims are often low stakes for companies." *Id.* But when "legal conclusions or factual findings from an individual PAGA arbitration" are "binding" in "non-individual court action[s]," companies will likely "devote substantial resources at that individual arbitration," thereby undermining the efficiency that is "the 'point' of enforcing arbitration agreements according to their

terms." *Id.* (citation omitted). In this way, California courts have imposed yet another "mechanism" for "coerc[ing] parties into withholding PAGA claims from arbitration." *Viking River*, 596 U.S. at 661. The FAA preempts California's attempt to gut *Viking River* through this device.

Seifu contends *Adolph*'s non-severance approach does not violate the FAA because it "ensures that parties can elect to structure their dispute-resolution process as they wish, including by resort" to "bifurcated" yet tethered proceedings. Opp'n 19 (citation omitted). Seifu's contention ignores the FAA violation at issue. *Viking River* construed the FAA to *require* an individual claim to be "committed to a separate proceeding." 596 U.S. at 663. The California Supreme Court instead reimagined the separate proceeding required by the FAA as a "single action" adjudicated in multiple fora via partial bifurcation. *Adolph*, 532 P.3d at 695. That is inconsistent with the FAA and therefore preempted. Pet. 23–24.

Presumably sensing his bifurcation argument is without merit, Seifu tries to salvage *Adolph* by insisting that its tethering approach is consistent with Section 3 of the FAA. Opp'n 20. Not so. Seifu's analogy to this stay provision underscores, rather than undercuts, *Adolph*'s violation of the FAA. Section 3 *requires* a *federal* district court to stay an action pending arbitration. *Smith v. Spizzirri*, No. 22-1218, 2024 WL 2193872, at *2, *4 (U.S. May 16, 2024). California courts hold Section 3 is inapplicable in *state* court. *Cable Connection, Inc. v. DIRECTV, Inc.*, 190 P.3d 586, 597 (Cal. 2008). That is why *Adolph* held that California courts have "discretion" (not a

Section 3 mandate) to stay a non-individual claim pending arbitration of the individual claim. 532 P.3d at 692–93.

This means, of course, that California courts could choose *not* to stay non-individual claims, *see id.*, forcing parties to simultaneously litigate and arbitrate issues committed solely to arbitration, including whether the named plaintiff has statutory standing because he personally sustained a legal violation. The California Court of Appeal opened that door here, directing the trial court "to determine in the first instance whether a stay of Seifu's non-individual claims would be appropriate under the circumstances." App. 20. What was once a federal right mandated by the FAA under *Viking River* has become a suggestion that California courts may disregard. This approach cannot be reconciled with *Viking River*'s directive that individual claims be "pared away" from non-individual claims. 596 U.S. at 663.

3. *California public policy*. Lyft's petition explained (at 25–28) that the FAA expressly preempts California's public policy defense against enforcing PAGA representative-action waivers. These waivers require the dismissal of non-individual claims. App. 7. The reason for express preemption is that the FAA's plain text does not allow courts to refuse to enforce arbitration provisions on the ground they are inconsistent with state public policy. Pet. 25–27. Seifu contends *Viking River* rejected this express preemption challenge, Opp'n 23, because the Court said "[n]othing in the FAA establishes a categorical rule mandating enforcement of waivers of standing to

assert claims on behalf of absent principals." 596 U.S. at 656–57.

But Seifu takes this statement out of context. The Court was analyzing whether *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), applied to PAGA cases. *Viking River*, 596 U.S. at 655–57. *Concepcion* held that the FAA preempted California's prohibition against class-action waivers because the prohibition was an "obstacle" to the FAA's objectives. 563 U.S. at 352 (citation omitted). Obstacle preemption is implied, not express. *Sprietsma v. Mercury Marine, a Div. of Brunswick Corp.*, 537 U.S. 51, 65 (2002). Thus, the statement in *Viking River* does not address express preemption, and its silence is no impediment to Lyft's argument here. Pet. 27–28.

Pointing to Section 2 of the FAA, Seifu argues arbitration provisions may "be invalidated 'upon such grounds as exist at law or in equity for the revocation of any contract'" and, in Seifu's view, California's "bar on PAGA waivers" is such a ground. Opp'n 23 (citation omitted). Seifu is wrong. The permissible grounds for revoking an arbitration provision under Section 2 are those "related to *the making* of the agreement." *Concepcion*, 563 U.S. at 355 (Thomas, J., concurring) (emphasis added). That necessarily excludes state-law policy-based defenses, *id.*, since a State's "public-policy reasons" for refusing to enforce arbitration provisions do "not concern whether the contract was properly made," *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 526 (2018) (Thomas, J., concurring) (citation omitted). The FAA therefore permits PAGA representative-action waivers because California's defense to these waivers rests on state "public policy,"

Iskanian v. CLS Transp. L.A., LLC, 327 P.3d 129, 133 (Cal. 2014), a ground *not* preserved from preemption by the FAA's text, Pet. 25–27.

C. Lyft did not waive preemption arguments.

Seifu contends Lyft waived two arguments: (1) the FAA preempts California's prohibition on dismissing non-individual claims because doing so interferes with other workers' arbitration agreements; and (2) the FAA preempts California's public-policy-based prohibition against enforcing PAGA representative action waivers. Opp'n 20–21, 23, 25. Seifu is mistaken. Lyft raised both arguments below. *See, e.g.*, Lyft's Opening Br. at 32 (Cal. Ct. App. Sept. 25, 2020); Lyft's Pet. for Review at 19 (Cal. May 9, 2023).

Moreover, Lyft has consistently claimed the FAA preempts Seifu's PAGA claims. *See, e.g.*, Lyft's Mem. P. & A.'s in Supp. of Pet. to Compel Individual Arbitration at 2 (Cal. Super. Ct. Oct. 15, 2018); Lyft's Opening Br. at 10 (Cal. Ct. App. Sept. 25, 2020); Lyft's Supp. Ltr. Br. at 2 (Cal. Ct. App. Oct. 3, 2022); Lyft's Pet. for Review at 10–14, 19 (Cal. May 9, 2023). And "'"[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below."'" *Citizens United v. FEC*, 558 U.S. 310, 330–31 (2010) (quoting *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995)). Preemption is one such "federal claim[]" in this respect. *Clark v. Jeter*, 486 U.S. 456, 459–60 (1988); *cf. N. Cal. Power Agency v. Grace Geothermal Corp.*, 469 U.S. 1306, 1307

(1984). While the precise contours of Lyft's FAA preemption arguments have evolved to account for the ongoing dialogue between this Court and the California Supreme Court in *Epic*, *Viking River*, and *Adolph*, Lyft has persisted with the same overarching federal claim—that the FAA bars any California rule allowing Seifu to litigate PAGA claims in court. Nothing has been waived.

II. Seifu's additional arguments do not justify the denial of certiorari.

Seifu argues against certiorari because there is no conflict in the lower courts and because no other state has yet enacted a PAGA-like law. Opp'n 24–25. But the very same things were previously said in opposition to the petition for writ of certiorari in *Viking River*, and this Court nonetheless granted review. This Court often grants certiorari when, as in this case and *Viking River*, a lower court decision conflicts with this Court's precedent. *E.g.*, *Lambert v. Wicklund*, 520 U.S. 292, 293 (1997); *Army & Air Force Exch. Serv. v. Sheehan*, 456 U.S. 728, 733 (1982).

The case for certiorari is particularly compelling here because California courts have nullified *Viking River*. *Viking River* mandated the arbitration of individual claims and the dismissal of non-individual claims. But within a year, California courts had refused to dismiss non-individual claims. Pet. 4–5. Even the defendant who prevailed in *Viking River* was unable, on remand, to secure the dismissal mandated by this Court. Pet. 18.

Unsurprisingly, PAGA plaintiffs have been emboldened. Since the demise of *Viking River*'s dismissal rule, the filing of PAGA notices (for initiating lawsuits) reached an all-time annual high exceeding 7,000 notices. Pet. 29. The new legion of PAGA cases subjects businesses large and small to significant and unfair economic burdens. Emps. Grp. & CELC Amicus Br. 11–18.

Granting certiorari here would clarify the law by eliminating any dispute that the FAA requires the dismissal of non-individual claims. Unless this Court intervenes, the issue will continue to bedevil this Court and lower courts. Defendants will vigorously press preemption issues in light of the high stakes involved, much as they did before this Court granted certiorari in *Viking River*.

CONCLUSION

Lyft's petition for a writ of certiorari should be granted.

Respectfully submitted,

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