

No. ---

In The
SUPREME COURT OF THE UNITED STATES

YASSINE BAOUCH, *et al.*,
Petitioners,

v.

WERNER ENTERPRISES, Inc.,
DBA Werner Trucking;
Drivers Management, LLC,

Respondents

APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Eric Schnapper
Counsel of Record
University of Washington
School of Law
P.O. Box 353020
Seattle, WA 98195
(206) 616-3167
schnapp@u.washington.edu

JUSTIN L. SWIDLER
RICHARD SWARTZ
JOSHUA S. BOYETTE
Swartz Swidler
1101 Kings Hwy N.
Suite 402
Cherry Hill, N.J. 08034

Counsel for Petitioners

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eighth Circuit:

Petitioners Yassine Baouch, et al., pray for a 30-day extension of time to file their petition for certiorari in this Court to and including April 20, 2109. The final judgment of the Eighth Circuit was entered on November 14, 2018. A timely petition for rehearing and rehearing en banc was denied on December 21, 2018. Petitioners' time to petition for certiorari in this Court expires on March 21, 2019. This application is being filed more than 10 days before that date.

A copy of the opinion below is attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

As shown by the opinion below, this case concerns the distinction under the Fair Labor Standards Act ("FLSA") (and implementing regulations) between wages and reimbursement paid to an employee for expenses incurred on behalf of the employer, and the related distinction between wages and such reimbursement under the Internal Revenue Code (and implementing regulations). The respondent employers paid student drivers as little as \$1.86 a day denoted earnings, plus an additional \$41.00 a day denoted per diem. Because the respondents did not withhold income taxes, or pay payroll taxes, with regard to the per diem, an Internal Revenue Service Examiner concluded that the per diem was actually a taxable wage. On appeal, the IRS Appeals Commission sustained the respondents' contention that under the Internal Revenue Code the per diem was a reimbursement, not a wage. In this action, the student drivers contend that the per diem is not a wage (but a reimbursement), and that the

amount they received denoted earnings is less than the federal minimum wage of \$7.25 per hour, or the applicable state minimum wage. In the courts below, respondents successfully argued that the per diem, under the FLSA (and thus under state law), is a wage payment, not a reimbursement. This case presents important issues about the meaning of the FLSA and its implementing regulations, and about the interrelated administration of the FLSA and the Internal Revenue Code.

Petitioner was represented in the courts below by local counsel in New Jersey. Because of the distinctive issues and procedures in this Court, petitioner has recently retained as additional counsel Eric Schnapper of Seattle, Washington. Mr. Schnapper requires additional time to familiarize himself with the record and the inter-related regulatory schemes at issue, and to perform the necessary legal research, so that the petition may be properly framed and argued in this Court.

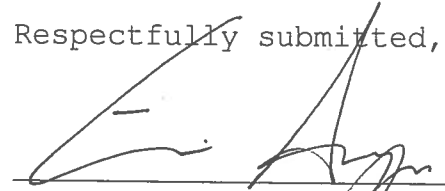
This application is being sought on behalf of:

- (a) the named plaintiffs set out on the attached addendum,
- (b) the class of current or former drivers certified by the District Court on May 12, 2014, and
- (c) the former or current drivers who opted to join the collective action conditionally certified by the District Court on May 12, 2014.

Wherefore petitioners respectfully request that an order be entered extending their time to petition for certiorari to and including April 20, 2019.

March 7, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric Schnapper', is written over a horizontal line.

Eric Schnapper
Counsel of Record
University of Washington
School of Law
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