

No. 21-453

IN THE
Supreme Court of the United States

UBER TECHNOLOGIES, INC., AND RASIER-CA, LLC,

Petitioners,

v.

JOHNATHON GREGG,

Respondent.

On Petition for a Writ of Certiorari to the
California Court of Appeal

RESPONDENT'S BRIEF IN RESPONSE

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QUESTION PRESENTED

Whether the Federal Arbitration Act requires state courts to enforce a waiver of a state statutory right to bring a representative action to collect penalties on behalf of the state, in violation of neutral principles of state law prohibiting such a waiver, if the waiver is set forth in an arbitration agreement.

**CORRECTION TO THE PETITION'S LIST OF
PARTIES**

Respondent respectfully submits a correction to the list of parties in the petition. Respondent's name should be spelled Johnathon Gregg.

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RESPONSE TO THE PETITION

This case raises the question on which this Court granted certiorari on December 15, 2021, in *Viking River Cruises v. Moriana*, No. 20-1573, and the petition should be held pending the Court's disposition of that case. Specifically, both cases present the question whether the Federal Arbitration Act (FAA) preempts the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014), that the right to bring a representative action under California's Private Attorneys General Act, or PAGA, cannot be waived in a private agreement, including an arbitration agreement.

PAGA creates a right of action in which individual employees bring "representative actions" on behalf of the State to recover penalties from employers for violations of California's Labor Code. In this case, respondent Johnathon Gregg brought a PAGA representative action in a California state court against petitioners Uber Technologies, LLC, and Rasier-CA, LLC ("Uber"), alleging that Uber misclassified him and other drivers as independent contractors rather than employees, resulting in multiple Labor Code violations. Uber invoked an arbitration agreement that purports to require arbitration of all disputes between Mr. Gregg and petitioners, bars arbitration of any claims brought by way of a "representative action," Pet. App. 4a, and specifically provides that Mr. Gregg may not bring a representative action under PAGA "in any court or in arbitration." Pet. App. 5a.

Because Uber's attempt to enforce the agreement's waiver of the right to bring a PAGA representative action was barred by *Iskanian*, both the state trial court and the California Court of Appeal held the provision

unenforceable and rejected Uber’s argument that subsequent decisions of this Court have effectively overruled *Iskanian*. The California Supreme Court denied review.¹

Uber’s petition presents one issue only: whether the *Iskanian* rule is preempted by the FAA.² This Court granted certiorari last month to resolve that issue in *Viking River Cruises*. The Court’s normal practice in such circumstances is to hold other petitions presenting the same issue pending its decision in the case in which it granted certiorari, and it should follow that practice here. The petition presents no other issues, would add nothing to the Court’s consideration of the question presented in *Viking River Cruises*, and could not in any event be considered together with that case this Term.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be held pending this Court’s decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573.

¹ Uber also argued below that the question whether Mr. Gregg’s had standing under PAGA could be subdivided from the merits of his PAGA claim and arbitrated individually even under *Iskanian*, but the courts also rejected that argument and Uber’s petition does not separately challenge that holding.

² Uber frames its question as whether the FAA requires arbitration of Mr. Gregg’s PAGA claims on an individual rather than representative basis. Pet. i. All PAGA claims, however, are inherently representative in nature, insofar as they assert the State’s right to collect penalties for violations of the Labor Code involving the employees subject to the violations alleged. *See ZB, N.A. v. Super. Ct.*, 448 P.3d 239, 243 (2019). Thus, the question (as in *Viking*) is more accurately framed as whether the FAA requires enforcement of the waiver of the right to bring a PAGA representative action in any forum.

Respectfully submitted,

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