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

RESPONDENT'S BRIEF IN OPPOSITION

NICOLAS SANSONE
ALLISON M. ZIEVE
SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

SHANNON LISS-RIORDAN
Counsel of Record
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street
Suite 2000
Boston, MA 02116
(617) 994-5800
sliss@llrlaw.com

Attorneys for Respondent

May 2024

QUESTION PRESENTED

Whether the California Court of Appeal correctly held, as a matter of California law, that an employee who raises individual claims (based on Labor Code violations that his employer committed against him) and non-individual claims (based on Labor Code violations that his employer committed against others) under California's Private Attorneys General Act retains statutory standing to pursue the non-individual claims after the individual claims have been submitted to arbitration.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

INTRODUCTION

California's Private Attorneys General Act of 2004 (PAGA) authorizes an "aggrieved employee" to raise claims on behalf of the state against his or her employer for certain violations of the state's Labor Code. Specifically, PAGA confers standing on the employee to file an enforcement action that seeks to recover civil penalties for the state in response to "individual" Code violations (i.e., those that the employer has committed against the plaintiff) and "non-individual" violations (i.e., those that the employer has committed against similar employees).

This Court held in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), that the Federal Arbitration Act (FAA), 9 U.S.C. § 1, *et seq.*, does *not* preempt a state-law rule that bars courts from enforcing an employee's pre-dispute waiver of the right to pursue non-individual PAGA claims on behalf of the state. At the same time, the Court held that the FAA *does* require enforcement of an agreement to arbitrate individual PAGA claims. After reaching these federal holdings, the Court considered the status of non-individual claims that remain in court after the individual claims have been submitted to arbitration. Based on its interpretation of "PAGA's standing requirement," the Court took the view that "PAGA provides no mechanism" for the adjudication of the remaining non-individual claims because an employee whose individual claims are in arbitration "lacks statutory standing" and "PAGA does not allow such [a] person[] to maintain suit." 596 U.S. at 663.

Here, petitioner Lyft, Inc. seeks review of a California intermediate court decision that follows *Viking River*'s federal holdings but reaches a diff-

erent conclusion on the state-law issue of statutory standing. The state court held that a waiver of non-individual PAGA claims that Lyft included in its employment contract with respondent Million Seifu was unenforceable under the state-law rule upheld in *Viking River*. Then, consistent with *Viking River*, the court held that the FAA required it to enforce a contractual provision directing that any individual PAGA claims arising from Seifu's employment must be submitted to arbitration. Finally, the court interpreted PAGA's text, as well as prior state-court decisions applying the statute in various contexts, and held as a matter of state law that PAGA confers standing on Seifu to continue pursuing the non-individual claims in state court.

The state court's holding on a state-law issue of statutory standing does not warrant review. As Lyft concedes, this Court lacks jurisdiction to grant certiorari solely "to resolve state-law questions." Pet. 17. Lyft attempts to evade this restriction by contorting *Viking River*. According to Lyft, *Viking River*'s standing analysis states a federal preemption holding. The relevant portion of *Viking River*, though, asked whether "*PAGA* provides [a] mechanism" for adjudicating non-individual claims after a plaintiff's individual claims have been submitted to arbitration and whether "*PAGA* … allow[s]" the plaintiff to retain "statutory standing" under California law in such circumstances. *Viking River*, 596 U.S. at 663 (emphases added). Nothing in *Viking River*'s language or reasoning supports Lyft's strained interpretation. No court has adopted it, and at least four Justices have expressly rejected it.

Perhaps sensing the weakness of its argument that the decision below conflicts with *Viking River*'s

holding on the federal question decided in that case, Lyft advances a grab-bag of other arguments as to why the FAA supposedly preempts the state-law standing principles that the state court applied here. Lyft waived these arguments by failing to present them to the court below, and they are therefore not properly presented to this Court. In any event, Lyft has not identified a split of authority on any of its belatedly presented preemption theories, most of which directly contradict *Viking River*.

Moreover, the proper interpretation of statutory standing requirements under a state statute is not a matter of national concern that requires this Court's attention. Given the paucity of state enforcement schemes that resemble PAGA, the lower-court consensus on the narrow issue of PAGA standing is unlikely to have broader ramifications. In addition, because the only preemption argument that Lyft has preserved is based on an implausible reading of *Viking River* that four Justices have already rejected (and that no Justice has accepted), an opinion from this Court on Lyft's question presented would contribute little additional guidance to lower courts in applying federal preemption principles, beyond what the Court offered just two years ago in *Viking River*.

This Court should deny review.

STATEMENT

Legal Background

1. California's legislature enacted PAGA in 2004 to address concerns that the state's civil enforcement authorities lacked sufficient resources to adequately enforce the state's Labor Code. *Iskanian v. CLS Transp. L.A., LLC*, 327 P.3d 129, 146 (Cal. 2014). In an attempt to strengthen the state's enforcement

efforts, PAGA authorizes "aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations." *Arias v. Super. Ct.*, 209 P.3d 923, 929 (Cal. 2009). Under PAGA, any civil penalty that can be "assessed and collected" by California's Labor and Workforce Development Agency (LWDA) for a Code violation "may, as an alternative, be recovered through a civil action brought by an aggrieved employee," Cal. Labor Code § 2699(a), defined as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed," *id.* § 2699(c). In such an action, "[t]he government entity on whose behalf the plaintiff files suit is always the real party in interest," *Iskanian*, 327 P.3d at 148, and "most of the proceeds of th[e] litigation go[] to the state," *id.* at 133; *see* Cal. Labor Code § 2699(i).

Because a PAGA plaintiff "acts as 'the proxy or agent of the state's labor law enforcement agencies' and 'represents the same legal right and interest as' those agencies," the plaintiff has standing to seek "penalties for violations involving employees other than the PAGA litigant herself." *ZB, N.A. v. Super. Ct.*, 448 P.3d 239, 243–44 (Cal. 2019) (quoting *Iskanian*, 327 P.3d at 147); *see* Cal. Labor Code § 2699(a) (authorizing an aggrieved employee to seek penalties for the state "on behalf of himself or herself and other current or former employees"). An employee who has "suffered a single violation" qualifies as "aggrieved" under PAGA and thus can "use that violation as a gateway" to bring claims on the state's behalf against the employer for further violations the employer has committed against others. *Viking River*, 596 U.S. at 647. At all times, however, the PAGA claims are "legally and conceptually different

from [the] employee's own suit for damages" because the PAGA claims belong to the state and are brought primarily in order "to benefit the general public, not the party bringing the action." *Kim v. Reins Int'l Cal., Inc.*, 459 P.3d 1123, 1127 (Cal. 2020).

2. In its 2014 *Iskanian* decision, the California Supreme Court held that "an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy" and so is unenforceable. 327 P.3d at 133. The court emphasized that "the Legislature's purpose in enacting the PAGA was to augment [LWDA's] limited enforcement capability … by empowering employees to enforce the Labor Code as representatives of the Agency." *Id.* at 149. Giving effect to an aggrieved employee's pre-dispute waiver of the right to bring a PAGA action that alleges Labor Code violations committed against other employees, the court reasoned, would "disable one of [California's] primary mechanisms for enforcing the Labor Code." *Id.*

Iskanian acknowledged that the FAA requires a court to treat an arbitration agreement as "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* at 150 (quoting 9 U.S.C. § 2). But *Iskanian* held that the FAA does not preempt a state-law bar on enforcing an arbitration provision that purports to waive an employee's substantive right to bring a PAGA action in response to Labor Code violations committed against the employee's coworkers. *Id.* at 149. As *Iskanian* stated, the FAA does not "curtail the ability of states to supplement their enforcement capability by authorizing willing emp-

loyees to seek civil penalties for Labor Code violations traditionally prosecuted by the state." *Id.* at 152.

3. In *Viking River*, this Court confirmed that the FAA does not preempt California's bar on enforcing pre-dispute PAGA waivers. The Court held that the FAA "does not require courts to enforce contractual waivers of substantive rights and remedies." 596 U.S. at 653. Rather, the FAA preempts only those state-law rules that "tak[e] the individualized and informal *procedures* characteristic of traditional arbitration off the table." *Id.* at 656. The Court observed that PAGA creates no "procedural mechanism at odds with arbitration's basic forum." *Id.* Unlike class-action proceedings, which require an adjudicator to resolve the claims of multiple parties (including absent parties) based on a representative plaintiff's claims, *see id.* at 654–55, PAGA proceedings in which a plaintiff raises multiple claims on behalf of the state are the sort of "single-agent, single-principal representative suits" that this Court has never found "inconsistent [with] the norm of bilateral arbitration," *id.* at 657.

Separately, this Court held that the FAA *does* preempt a state-law procedural rule that some California courts had adopted following *Iskanian*. Specifically, some courts had read *Iskanian* to bar parties from agreeing to divide an employee's PAGA action between arbitral proceedings that would resolve the "individual" PAGA claims (i.e., those based on Labor Code violations committed against the PAGA plaintiff) and judicial proceedings that would resolve the "non-individual" PAGA claims (i.e., those based on Labor Code violations committed against others). *See id.* at 646–47. This Court held, however, that "[t]his prohibition on contractual division of PAGA actions

into constituent claims unduly circumscribe[d] the freedom of parties to determine 'the issues subject to arbitration' and 'the rules by which they will arbitrate.'" *Id.* at 659 (quoting *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019)). Under the FAA, parties must be able to "control which claims are subject to arbitration," even if "bifurcated proceedings are an inevitable result" of the parties' agreement. *Id.* at 660.

Viking River then turned to the specific arbitration agreement before it, which the state courts had refused to enforce after construing it to include "a wholesale waiver" of the employee's right to bring PAGA claims in any forum. *Id.* at 662. The Court held that the agreement "remain[ed] invalid" under *Iskanian*'s non-preempted bar on PAGA waivers. *Id.* Nonetheless, the Court reversed the denial of the employer's motion to compel arbitration of the individual PAGA claims. *Id.* at 662–63. A severability clause contained in the agreement gave instructions on how to proceed "if the waiver provision [was] invalid" and, as the Court construed the clause, required the employee to arbitrate her individual PAGA claims. *Id.* at 662. Because the Court had just held that the FAA demands enforcement of a contractual agreement to divide a PAGA action "into individual and non-individual claims" and to arbitrate the former, the Court concluded that the individual claims must be sent to arbitration. *Id.*

Finally, the Court addressed the "remaining question" of what should happen to the non-individual PAGA claims. *Id.* Given the Court's holding that the FAA does not preempt *Iskanian*'s state-law bar on PAGA waivers, the Court recognized that the non-individual claims could "not be dismissed simply

because they [were] 'representative.'" *Id.* at 662–63. But as the Court construed "PAGA's standing requirement" and California case law interpreting the statute, "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." *Id.* at 663. Based on that understanding of California law, the Court held that "the correct course" on remand would be to dismiss the non-individual claims. *Id.* As Justice Sotomayor explained in concurrence, however, "if this Court's understanding of state law [was] wrong, California courts, in an appropriate case, [would] have the last word." *Id.* at 664 (Sotomayor, J., concurring).

Although Justices Barrett and Kavanaugh and Chief Justice Roberts concurred in the judgment, they declined to join the majority opinion's discussion of PAGA standing because it "addresse[d] disputed state-law questions." *Id.* (Barrett, J., concurring in the judgment). Meanwhile, Justice Thomas "continue[d] to adhere to the view that the [FAA] does not apply to proceedings in state courts" in the first place and so simply would have affirmed the state courts' denial of the employer's motion to compel arbitration altogether. *Id.* at 665 (Thomas, J., dissenting).

4. The California Supreme Court has since made clear that *Viking River*'s understanding of PAGA standing was incorrect. In *Adolph v. Uber Technologies, Inc.*, 532 P.3d 682 (Cal. 2023), California's high court held that "an aggrieved employee who has been compelled to arbitrate claims under PAGA that are 'premised on Labor Code violations actually sustained by' the plaintiff maintains statutory standing to pursue 'PAGA claims arising out of events involving other employees' in court." *Id.* at 686

(citations omitted; quoting *Viking River*, 596 U.S. at 648–49). Looking first to statutory text, the court noted that PAGA sets out "only two requirements for … standing": that the plaintiff has been "employed by the alleged violator" and is someone "against whom one or more of the alleged violations was committed." *Id.* at 690 (quoting *Kim*, 459 P.3d at 1128–29). The court explained that "[a]rbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee" who meets PAGA's express standing requirements. *Id.* at 691.

The state supreme court found further support for its holding in prior state-court opinions that "declined to impose additional [standing] requirements not found in the statute." *Id.* at 690. First, the court pointed to its holding in *Kim* that a plaintiff who had settled his individual damages claims against his employer did not thereby lose statutory standing to pursue PAGA claims for civil penalties on the state's behalf. *Id.* Second, the Court approved a state appellate court's holding in *Johnson v. Maxim Healthcare Services, Inc.*, 66 Cal. App. 5th 924 (2021), that an employee had standing to bring a PAGA action even though her individual damages claim against her employer was time-barred. *Adolph*, 532 P.3d at 690–91. These cases "ma[de] clear," the California Supreme Court explained, that "a worker becomes an 'aggrieved employee' with standing to litigate claims on behalf of fellow employees upon sustaining a Labor Code violation committed by his or her employer," *id.* at 691, and that "post-violation events" cannot "strip an aggrieved employee of the ability to pursue a PAGA claim," *id.* at 690.

Factual and Procedural Background

1. Million Seifu worked as a driver for Lyft, a company that uses a smartphone application to connect drivers with customers seeking transportation. Pet. App. 3a, 6a. As a condition of using Lyft's application, Seifu agreed to Lyft's Terms of Service, which provided that drivers were "require[d] … to submit claims [they] ha[d] against Lyft to binding and final arbitration on an individual basis." *Id.* at 6a; *see id.* at 34a. The Terms of Service also required Seifu to "agree not to bring a representative action on behalf of others under [PAGA] … in any court or in arbitration" and to agree that any PAGA action he brought would "be resolved in arbitration on an individual basis only (i.e., to resolve whether [Seifu] ha[d] personally been aggrieved or subject to any violations of law)" and would "not be used to resolve the claims or rights of other individuals." *Id.* at 7a.

In 2018, Seifu filed a PAGA action against Lyft in California state court. *Id.* at 3a–4a. Seifu claimed that Lyft had misclassified him and his fellow drivers as independent contractors rather than employees and had committed various Labor Code violations as a result. *Id.* at 4a. Lyft then moved to compel arbitration, invoking its Terms of Service and arguing that Seifu had waived his right to raise PAGA claims based on Labor Code violations that Lyft had committed against anyone other than himself. *Id.* at 23a.

The trial court denied Lyft's motion, relying on *Iskanian*'s rule that "an arbitration provision waiving PAGA actions is unenforceable." *Id.* at 35a. Lyft sought review of the trial court's ruling, and the Court of Appeal affirmed, *id.* at 31a, likewise holding that *Iskanian* barred enforcement of the waiver, *id.*

at 27a. After the California Supreme Court denied review, *see Seifu v. Lyft, Inc.*, No. S269800 (Cal. Aug. 18, 2021), Lyft filed a petition for certiorari in this Court, *see* U.S. No. 21-742. Following its decision in *Viking River*, the Court granted Lyft's petition, vacated the Court of Appeal's judgment, and remanded for further consideration. Pet. App. 9a.

2. On remand, the parties briefed the effect of *Viking River* on this case. In its brief, Lyft argued that *Viking River* "require[d] that Seifu's action be divided into individual and non-individual PAGA claims, and [that] he must be compelled to arbitrate his individual PAGA claim." Lyft's Supp. Letter Br. at 4 (Cal. Ct. App. Oct. 3, 2022). As for the non-individual claims, Lyft conceded that they were not subject to arbitration. *See id.* at 15 (stating that "[t]he issues raised by Seifu's individual and non-individual PAGA claims … cannot be resolved in the same forum"). Lyft argued, however, that *Viking River* "crafted a federal rule of decision" on PAGA standing that required the state court to direct dismissal of Seifu's non-individual PAGA claims, rather than to allow them to proceed in court. *Id.* at 5.

The California Court of Appeal reversed in part and affirmed in part the trial court's denial of Lyft's motion to compel arbitration. Pet. App. 5a. As to Seifu's individual claim, the court reversed the trial court's denial of Lyft's motion to compel arbitration, as all parties agreed was required by *Viking River*. *Id.* at 14a, 20a. As to the non-individual claims, the court rejected Lyft's argument that they must be dismissed for lack of standing. *Id.* at 5a. The court first observed that the parties did not dispute that the contractual provision purporting to effect "a wholesale waiver of Seifu's right to bring non-

individual PAGA claims in any forum[] was unenforceable" under non-preempted state law. *Id.* at 13a. The court then explained that it was "not bound by the United States Supreme Court's interpretation of California law" in *Viking River*, such that the question whether Seifu retained PAGA standing to pursue non-individual claims in court remained unresolved. *Id.* at 14a. The court was "not persuaded" by Lyft's argument that *Viking River*'s discussion of PAGA standing was rooted in federal law. *Id.* at 15a. As the court explained, *Viking River* "interpreted *Kim* and other California authority to reach its conclusion as to standing." *Id.*

The court then "independently assess[ed] the [state-law] standing requirements for Seifu to continue to pursue his non-individual PAGA claim in court." *Id.* at 16a. In an analysis similar to the one that the California Supreme Court would later conduct in *Adolph*, the court examined PAGA's text, along with the *Kim* and *Johnson* decisions, and held that PAGA plaintiffs who arbitrate their individual claims do not lose standing to litigate their non-individual claims in court. *Id.* at 16a–18a. The court therefore affirmed the trial court's denial of Lyft's motion to compel arbitration of the non-individual claims and remanded for the trial court to determine whether to stay those claims pending Seifu's arbitration of the individual claim. *Id.* at 20a.

3. Lyft petitioned the California Supreme Court for review. The court granted the petition but deferred action pending its decision in *Adolph*. After deciding *Adolph*, the California Supreme Court dismissed review in this case. Pet. App. 1a.

REASONS FOR DENYING THE WRIT

I. Lyft seeks review of a state-law ruling.

Lyft asks this Court to resolve whether the decision below impermissibly "deviat[ed] from this Court's direction to dismiss non-individual claims" after the individual claim in a PAGA action has been submitted to arbitration. Pet. i. *Viking River*'s "direction" on this point, however, was based on this Court's understanding of "PAGA's standing requirement." 596 U.S. at 663; *see id.* (opining that dismissal of non-individual claims was required after individual claims were submitted to arbitration because "PAGA provides no mechanism" for individual and non-individual claims to be resolved in "separate proceeding[s]" and "PAGA does not allow" a plaintiff to retain "statutory standing" under such circumstances). The Court's statements that it was resolving a matter of statutory standing under a state statute leave no doubt that the Court, after concluding its federal preemption analysis, was deciding a "remaining question" of state law to complete the disposition of the case before it. *Id.* at 662.

This understanding of *Viking River* follows not only from the opinion's express language but also from this Court's longstanding recognition that issues of standing in state court are controlled by state law. *See, e.g.*, *City of Los Angeles v. Lyons*, 461 U.S. 95, 113 (1983) ("[S]tate courts need not impose the same standing … requirements that govern federal court proceedings."); *Doremus v. Bd. of Educ.*, 342 U.S. 429, 434 (1952) (acknowledging that state courts are free to take jurisdiction over disputes that would not qualify as justiciable cases or controversies

in federal court). Indeed, four Justices expressly stated that the *Viking River* majority's interpretation of a state statute, "based on available guidance from California courts," addressed a question of "state law." *Viking River*, 596 U.S. at 664 (Sotomayor, J., concurring); *see also id.* (Barrett, J., concurring in the judgment) (faulting the majority for "address[ing] disputed state-law questions"). The majority opinion did not voice any disagreement with that point.

Because the decision below departed from the analysis in *Viking River* only as to the state-law question of statutory standing under PAGA, review is unwarranted. As this Court has long recognized, state courts are the ultimate arbiters of state-law issues, including issues of statutory interpretation. *See, e.g.*, *Brown v. Ohio*, 432 U.S. 161, 167 (1977); *Green v. Neal's Lessee*, 31 U.S. 291, 298 (1832). Out of "[r]espect for the independence of state courts" and to avoid "rendering advisory opinions," the Court has thus "refus[ed] to decide cases" where state law provides the basis for the outcome below. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). Here, the state court interpreted a state statute and issued a holding on statutory standing based on state law. *Cf. Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 196–97 (2017) (explaining that the issue whether a plaintiff has statutory standing to raise a cause of action is resolved by interpreting the statute that creates the cause of action). This Court has no authority to issue a binding opinion on the state-law issue, and granting review to offer an advisory opinion would exceed the Court's jurisdiction. *See Mo. Pac. Ry. Co. v. McGrew Coal Co.*, 256 U.S. 134, 135 (1921) (noting that this Court has "no jurisdiction to review" state-

law issues that "raise[] no substantial federal question").

The court that *does* have authority to issue definitive rulings on California law—the California Supreme Court—has already held that the Court of Appeal's holding on PAGA standing in this case is correct. *See Adolph*, 532 P.3d at 691 (citing the Court of Appeal's decision with approval). That *Viking River* reached a different conclusion on the state-law issue is irrelevant, because state courts "have the last word" on state law. *Viking River*, 596 U.S. at 664 (Sotomayor, J., concurring); *see Green*, 31 U.S. at 298 (holding that "[t]he decision of [a state-law] question, by the highest judicial tribunal of a state, should be considered as final by this court"). And because the views of the California Supreme Court "with respect to state law are binding on the federal courts," including this Court, *Wainwright v. Goode*, 464 U.S. 78, 84 (1983) (per curiam), granting review to consider the state-law issue that *Adolph* has already definitively resolved would be not only jurisdictionally improper but also purposeless.

II. The decision below is consistent with *Viking River*'s holdings on federal law.

A. Attempting to sidestep the jurisdictional impediments to securing review of a state-law holding, Lyft asserts that *Viking River*'s analysis of a plaintiff's standing to litigate a non-individual PAGA claim announced a "federal rule of decision." Pet. 15. This assertion grievously misreads *Viking River*. Again, *Viking River* consulted the provisions of PAGA (a state statute), as well as state-court precedent, to address whether "*PAGA* provides [a] mechanism to enable a court to adjudicate non-individual

PAGA claims once an individual claim has been committed to a separate proceeding." 596 U.S. at 663 (emphasis added). *Viking River* then concluded that "*PAGA* does not allow" adjudication of non-individual claims under such circumstances because the state statute confers no "statutory standing" on the plaintiff to pursue them. *Id.* (emphasis added).

Lyft's contrary reading strains credulity. Lyft points out that *Viking River*'s discussion of "what the lower courts should have done with [the] non-individual claims" in that case begins by referring back to the Court's FAA "holding in th[e] case." Pet. 15 (first alteration in original; quoting *Viking River*, 596 U.S. at 662–63). From this basis, Lyft reasons that *Viking River*'s holding on PAGA standing "was an outgrowth of applying the FAA to PAGA actions." *Id.* The passage on which Lyft relies, however, unambiguously *rejects* FAA preemption as a basis for dismissing the non-individual claims. The sentences excerpted by Lyft say:

> The remaining question is what the lower courts should have done with [the] non-individual claims. Under our [FAA] holding in this case, those claims may not be dismissed simply because they are "representative." *Iskanian*'s rule remains valid to that extent.

596 U.S. at 662–63. Having reiterated its earlier holding that the FAA *does not preempt* the state-law rule that bars courts from enforcing a pre-dispute waiver of non-individual PAGA claims, *Viking River* proceeded to ask whether "PAGA" *itself* "provides [a] mechanism" for the adjudication of non-individual PAGA claims if the individual claims in a PAGA action are subject to arbitration. *Id.* at 663.

Lyft's contention that *Viking River*'s ruling on PAGA standing "was a garden-variety example of creating a federal rule to protect federal rights," Pet. 16, is inexplicable. *Viking River* holds that the FAA does *not* confer on an employer a federal right to the enforcement of a pre-dispute waiver of non-individual PAGA claims. *See* 596 U.S. at 657 ("[W]e have never held that the FAA imposes a duty on States to render all forms of representative standing waivable by contract."). Under *Viking River*'s federal holdings, the FAA instead preserves the right "to choose whether to litigate those claims or arbitrate them." *Id.* at 659; *see id.* at 660 (explaining that the FAA preempts state-law rules that "defeat the ability of parties to control which claims are subject to arbitration"). Consistent with *Viking River*, the decision below gives effect to that right by compelling arbitration of the only claim that the parties agreed to arbitrate: the individual PAGA claim.

Underscoring the implausibility of Lyft's reading of *Viking River*, Lyft identifies no authority that has adopted it. Indeed, four Justices have explicitly stated that *Viking River*'s discussion of PAGA standing addresses state-law issues. *See id.* at 664 (Sotomayor, J., concurring); *id.* (Barrett, J., concurring in the judgment). And despite Lyft's claim that federal district courts are divided on the meaning of *Viking River*, Pet. 18–19, Lyft cites no decision that suggests that *Viking River*'s analysis of PAGA standing is based on federal law. Instead, Lyft cites a handful of pre-*Adolph* decisions from federal district courts that agree with *Viking River*'s view of *state* law. *See Huell v. Bevmo Holdings, LLC*, 2023 WL 1823611, at *1 (E.D. Cal. Feb. 8, 2023) (dismissing non-individual PAGA claims "for lack of statutory

standing"); *Thistlewaite v. United Parcel Serv., Inc.*, 2022 WL 17578868, at *3 (C.D. Cal. Dec. 7, 2022) (same); *Rivas v. Coverall N. Am., Inc.*, 2022 WL 17960776, at *4 (C.D. Cal. Nov. 28, 2022) (same). And one of those district court decisions was recently reversed in part because the California Supreme Court "has since clarified th[e] interpretation of California law." *Rivas v. Coverall N. Am., Inc.*, 2024 WL 1342738, at *2 (9th Cir. Mar. 29, 2024).

Lyft also makes the circular argument that *Viking River*'s ruling on PAGA standing could not have "decided a question of state law" because "this Court lacks jurisdiction to resolve state-law questions and does not grant certiorari to do so." Pet. 17. As explained above, at 14–15, this Court lacks jurisdiction to decide cases that present only state-law questions. The Court granted the petition in *Viking River*, however, to address a *federal* question: "whether the [FAA] preempts a rule of California law that invalidates contractual waivers of the right to assert representative claims under [PAGA]." 596 U.S. at 643. In the "exercise of its … jurisdiction" to resolve that federal question, this Court had the power to "consider the state questions thus arising and … decide them," although it was "not obliged" to do so. *Missouri ex rel. Wabash Ry. Co. v. Pub. Serv. Comm'n of Mo.*, 273 U.S. 126, 131 (1927). But this Court's exercise of its power to decide a state-law issue in order to resolve a case that presented a "substantial federal question" and so fell within this Court's jurisdiction, *Mo. Pac. Ry. Co.*, 256 U.S. at 135, did not supersede the final authority of the California Supreme Court to issue a definitive interpretation of California law that diverged from *Viking River*'s view of state law, *see Brown*, 432 U.S. at 167.

B. Lyft briefly raises a variation of its argument that *Viking River*'s statutory standing discussion was based on federal law, citing the opinion's statement that the FAA requires courts to honor contracting parties' agreement to "pare[] away" a plaintiff's individual PAGA claim from any non-individual claims and "commit[]" the claims to "separate proceeding[s]." Pet. 23 (quoting *Viking River*, 596 U.S. at 663). According to Lyft, this language creates a federal rule requiring "complete severance" that can be effectuated only by dismissing the "headless non-individual claim[s]" that remain in court after the individual claim goes to arbitration. *Id.* at 23–24.

The language on which Lyft relies, though, is fully consistent with the decision below. In discussing contracting parties' right to split a PAGA action into arbitrable and non-arbitrable components, *Viking River* emphasizes that the FAA guarantees "the freedom of parties to determine 'the issues subject to arbitration' and 'the rules by which they will arbitrate.'" 596 U.S. at 659 (quoting *Lamps Plus*, 587 U.S. at 184). In other words, it recognizes that the FAA ensures that parties can elect to structure their dispute-resolution processes as they wish, including by resort to "bifurcated proceedings." *Id.* at 660. The decision below effectuates that guarantee by ordering that the individual PAGA claim be arbitrated—just as Lyft's Terms of Service required—and leaving the non-individual claims to be resolved in court.

Contrary to Lyft's argument, *Viking River* did not hold that *the FAA* requires any particular legal consequences to flow from contracting parties' decision to bifurcate their claims. To the contrary, *Viking River* looked to California law, not the FAA, to discern the consequences of bifurcation. *See id.* at

663 (consulting "PAGA's standing requirement" to determine how a court should handle non-individual claims remaining after individual claims have been submitted to arbitration). And far from requiring the "complete severance" of arbitrable and non-arbitrable claims, Pet. 24, the FAA expressly contemplates that a single suit filed in court might contain arbitrable and non-arbitrable elements. *See* 9 U.S.C. § 3.

In the end, Lyft's contention that *Viking River* smuggled a federal holding into its interpretation of a state statute finds no support in the opinion.

III. Lyft's new arguments that the state-law principles applied below are otherwise pre-empted by the FAA have been waived and lack merit.

Pivoting from its assertion that *Viking River* contains a federal holding that resolves the state-law standing issue presented here, Lyft advances a bevy of arguments, independent of *Viking River*, in support of its contention that a PAGA plaintiff who has agreed to arbitrate individual claims lacks standing to pursue non-individual claims in court. Pet. 20–28. Those arguments were waived and, in any event, are meritless.

A. On remand to the state court of appeal following *Viking River*, Lyft's sole FAA preemption argument was that *Viking River*'s "new federal rule of decision" required dismissal of the non-individual claims. Lyft's Supp. Letter Br. at 5 (Cal. Ct. App. Oct. 3, 2022). And in its petition for review in the California Supreme Court, Lyft argued only that "the Court of Appeal erred in refusing to apply the disposition of dismissal required by *Viking River*." Lyft Pet. at 14, No. S279932 (Cal. May 9, 2023).

Nowhere in the remand proceedings did Lyft identify an FAA preemption issue that was untethered from its reading of *Viking River*. Because Lyft cannot "me[et] [its] burden of showing that the[se] issue[s] [were] properly presented to" the state courts below, review in this Court would be improper. *Adams v. Robertson*, 520 U.S. 83, 86 (1997); *cf. Brownback v. King*, 592 U.S. 209, 215 n.4 (2021) (declining to address an argument not raised in the appellate court in federal proceedings because "we are a court of review, not of first view" (citation omitted)). Further counseling against review, Lyft's failure to raise its FAA preemption arguments during the proceedings below constitutes a waiver under California's procedural rules. *See In re Campbell*, 11 Cal. App. 5th 742, 756 (2017) ("We will not address arguments raised for the first time on appeal.").

B. Lyft's new arguments are meritless as well. Lyft first argues that vindicating its right to choose to arbitrate individual PAGA claims is "impossible if non-individual PAGA claims may be litigated in court" because the litigation will "resolve core issues" and could have preclusive effect. Pet. 21. Nothing in the decision below, however, prevents Lyft from agreeing with its drivers to resolve non-individual PAGA claims, or any "core issues" that those claims present, to arbitration. *Cf. Viking River*, 596 U.S. at 660 (explaining that "bifurcated [PAGA] proceedings" are a function of contracting parties' choice to "depart from standard rules"). In any event, the California Supreme Court has already considered the risk that bifurcated proceedings could cause arbitrable issues to be resolved in litigation, and it has addressed that risk by acknowledging trial courts' authority under state law to "stay the non-individual claims pending

the outcome of the arbitration." *Adolph*, 532 P.3d at 692. The decision below directed the trial court to consider such a stay in this case, Pet. App. 20a, and Lyft does not explain why that approach is insufficient to safeguard its rights.

Lyft next raises the concern that "if [a] non-individual claim fails" or "results in paltry penalties" after litigation in court, "other workers asserting their own PAGA claims [could] be saddled with the named plaintiff's outcome." Pet. 22. But the risk that a PAGA plaintiff's non-individual claims could fail—with possible consequences for future claims brought by other PAGA plaintiffs—exists irrespective of whether those claims proceed in court or in arbitration. The risk is a function of the fact that PAGA authorizes private plaintiffs to "represent[] a single principal, the LWDA, that has a multitude of claims." *Viking River*, 596 U.S. at 655. This Court has already rejected the argument that this legislative choice renders PAGA actions "inconsistent with arbitration's traditionally individualized form." *Id.*; *see id.* at 663 (reiterating that an agreement to arbitrate individual claims does not require dismissal of non-individual claims under the FAA "simply because they are 'representative'"). And to the extent that Lyft argues that the judicial resolution of a non-individual PAGA claim brought by one plaintiff infringes a future plaintiff's right to arbitrate related claims, Lyft overlooks that "PAGA judgments are binding only with respect to the State's claims, and are not binding on nonparty employees as to any individually held claims." *Id.* at 655.

Finally, Lyft contends that "[t]he FAA requires enforcement of representative-action waivers notwithstanding California's public policy against such

waivers." Pet. 25 (formatting omitted). This contention directly contradicts *Viking River*. *See Viking River*, 596 U.S. at 662 (holding that *Iskanian*'s prohibition on the waiver of non-individual PAGA claims "is not preempted by the FAA"). Lyft claims that *Viking River* does not foreclose its argument because the employer in *Viking River* argued that California's bar on the enforcement of PAGA waivers "created an *implied* conflict with the FAA," whereas Lyft bases its argument on the FAA's text. Pet. 27. Lyft did not present this argument to the state courts when briefing the effect of *Viking River*, and it does not identify any court that has ruled on (let alone adopted) the argument. This Court should not grant review on a waived argument as to which there is no split of authority, particularly where accepting that argument would require it to reverse the holding announced less than two years ago in *Viking River*.

Moreover, Lyft is wrong that *Viking River*'s preemption holding was limited to rejecting a theory of implied preemption. Rather, the Court stated: "*Nothing* 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 (emphasis added). And even beyond that, Lyft's reasoning fails on its own terms. According to Lyft, the FAA provision confirming that arbitration agreements may be invalidated "upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2, does not include "state-law policy-based defenses to enforcement." Pet. 26. Lyft's extratextual gloss cannot alter that *Iskanian*'s *non*-preempted bar on PAGA waivers is a "ground[]" that "exist[s] at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

IV. This case does not merit review for several additional reasons.

Other than its (meritless) argument that the state court's decision in this case "violated the FAA and this Court's application of the FAA in *Viking River*," Pet. i, Lyft offers no reason why the decision below warrants review. Lyft does not contend that the decision conflicts with appellate decisions applying the FAA or *Viking River*. And its inability to do so underscores that the state court's decision below analyzes "unique features" of a specific state-law statutory enforcement mechanism that this Court thoroughly considered just two years ago. *Viking River*, 596 U.S. at 648. Further exploration of how FAA preemption principles apply in this context, absent any conflict in the lower courts, is an exercise unworthy of this Court's time and attention.

Further, Lyft has identified no statutory regimes that are similar to PAGA and that are likely to present similar questions about the interplay between the FAA and statutory standing. Lyft claims that some unspecified number of other states "are considering bills that would enact PAGA analogues." Pet. 30. But it remains to be seen whether any of those bills will become law, whether the enacted version of any law will resemble PAGA in how it provides standing to aggrieved individuals or in any other relevant respect, and whether any court will apply the FAA to an enacted law in a way that diverges from the state court's approach here. The mere possibility that all of these contingencies could arise in the future does not support review. And while Lyft references the volume of PAGA litigation and the high monetary value of the claims asserted in some PAGA actions, *id.* at 29–30, the fact that

California has enacted a successful statutory scheme for strengthening enforcement of its state Labor Code does not mean that every case initiated under that scheme merits this Court's attention.

Lyft also declares that review is warranted because the decision below reflects "hostility to arbitration" and attempts to "circumvent[]" *Viking River*. *Id.* at 31. The state court's holding on statutory standing, however, does not "apply only to arbitration or … derive [its] meaning from the fact that an agreement to arbitrate is at issue." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 251 (2017) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). To the contrary, the court based its holding on a close reading of statutory text and prior California precedents addressing PAGA standing outside the arbitration context. Lyft offers no reason to think that the state court below—and the other state courts, including the California Supreme Court, that have reached the same holding on statutory standing following similar analyses—did not apply the proper legal principles in good faith.

Review is unwarranted for the additional reason that Lyft's own litigation choices below limit this Court's review to an issue whose resolution cannot meaningfully advance the law. The only preemption argument that Lyft has preserved is its argument that *Viking River*'s discussion of PAGA standing created a federal rule of decision under the FAA that state courts are bound to follow. But Lyft has identified no court that reads *Viking River* to do so, and four Justices have already stated that the relevant portion of the opinion addresses an issue of state law. *See supra* at 14. A fifth Justice, meanwhile, likely would not reach Lyft's FAA preemption

argument at all, because he "continue[s] to adhere to the view that the [FAA] does not apply to proceedings in state courts." *Viking River*, 596 U.S. at 665 (Thomas, J., dissenting). Accordingly, it is extremely unlikely that an opinion in this case would contribute to the development of federal preemption law.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

NICOLAS SANSONE
ALLISON M. ZIEVE
SCOTT L. NELSON
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

SHANNON LISS-RIORDAN
Counsel of Record
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street
Suite 2000
Boston, MA 02116
(617) 994-5800
sliss@llrlaw.com

Attorneys for Respondent

May 2024