

No. _____

IN THE
Supreme Court of the United States

LIVING SPACES FURNITURE, LLC, ET AL.,

Applicants,

v.

LUIS BETANCO,

Respondent.

**APPLICATION TO THE HON. ELENA KAGAN
FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA**

Pursuant to Supreme Court Rule 13(5), Applicants Living Spaces Furniture, LLC (Living Spaces), and Of Service Transportation LLC (OST), respectfully move for an extension of time of 30 days, to and including January 14, 2027, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be December 15, 2026.

In support of this request, Applicants state as follows:

1. The California Supreme Court issued an order denying review in this case on September 16, 2026 (Exhibit A). The California Court of Appeals issued a decision on June 25, 2026 (Exhibit B). This Court has jurisdiction under 28 U.S.C. §1257(a).

2. This case raises questions under the Federal Arbitration Act (FAA) that this Court’s recent precedent expressly leaves open for future consideration. In *Flowers Foods, Inc. v. Brock*, 608 U.S. 380 (2026), the Court held that workers need not personally cross state lines or interact with vehicles that do to fall within the FAA exemption applicable under Section 1 to transportation workers engaged in interstate commerce. *Id.* at 386. But *Flowers Foods* reiterated that only workers involved in “direct, necessary, and active participants in moving goods” fit within the Section 1 exemption and expressly declined to decide what “limits § 1 may or may not contain.” *Id.* at 389.

3. The Court can address that follow-up question by granting certiorari in this case. Driving entirely within California, Respondent Luis Betanco delivered furniture from a retailer (Living Spaces) and to the homes of its consumers. The furniture Respondent delivered was held in Living Spaces’ inventory for sale to the public, just as grocery stores hold bananas and clothing stores hold shirts for local retail sale. But the California Court of Appeal held that Respondent was engaged in interstate commerce for purposes of Section 1 because some of the furniture he delivered had previously been shipped from outside California. The decision—which the California Supreme Court declined to review—effectively treats Section 1’s interstate-commerce test as co-terminus with Congress’s interstate commerce power.

4. The ruling contravenes this Court’s holding that Section 1 does not “regulate to the full extent of [Congress’s] commerce power.” *Circuit City Stores, Inc. v.*

Adams, 532 U.S. 105, 117 (2001). And it splits with decisions of federal courts of appeals holding that Section 1 “does not encompass the local retail of goods, even if those goods previously have been shipped interstate.” *Immediato v. Postmates, Inc.*, 54 F.4th 67, 76 (1st Cir. 2022); *see also Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (rejecting a construction of Section 1 that would sweep in “dry cleaners who deliver pressed shirts manufactured in Taiwan and ice cream truck drivers selling treats made with milk from an out-of-state dairy”). Because *Flowers Foods* explicitly deferred for later litigation the question what interstate-commerce test applies under Section 1, this case presents a prime opportunity for the Court to provide much needed guidance on this question.

5. Applicants will file a petition asking this Court to review the California courts’ expansive construction of FAA Section 1 and related issues.¹ Although Applicants’ attorneys are working diligently to prepare a petition to assist the Court in considering the issues to be presented, they seek an extension in light of their previous and ongoing obligations. Additionally, lead for Living Spaces (Andrew Grossman) and OST (Chantel Febus and Ted Seitz) were not involved in the proceedings below and only recently began to review the record of the proceedings below and the applicable precedent. Accordingly, Applicants’ counsel require additional time in order to prepare and file a petition that will best present the issues for this Court’s review.

¹ Applicants may also raise issues concerning the interplay of the FAA and the California Labor Code Private Attorneys General Act of 2004, which remain open after *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022).

6. Attorneys for Living Spaces have substantial briefing and argument obligations between now and December 15, 2026, including: an opening merits brief in *AvKare, LLC v. United States*, No. 26-2332 (Fed. Cir.), due November 30, 2026; an opening brief in *Freifeld v. Persona Identities, Inc.*, 26-3114 (7th Cir.), currently due December 7, 2026; oral argument in *Pentec Health, Inc. v. DaVita, Inc.*, No. 26-3482 (9th Cir.), on December 10, 2026; oral argument in *Scout Motors, Inc. v. Braman Automotive, Inc. et al.*, No. 3D26-0248 (Fla. Ct. App. 3d Dist.) on November 3, 2026; a dispositive motions hearing in *The 1791 Foundation, Inc. v. NRA*, No. 1:26-cv-01823-PTG-IDD (E.D. Va.), on October 29, 2026; an opening brief in a preliminary injunction appeal in connection with *National Rifle Ass'n et al. v. The 1791 Foundation, Inc.*, Case No. 2026-CAB-004346 (D.C. Super. Ct.), likely in early December; a reply brief on a dispositive motion and oral argument in *Diaz v. Perez et al.*, Case No. CL-2026-0011368 (Fairfax Cnty. Cir. Ct.), on October 30, 2026, and November 20, 2026, respectively.

7. Attorneys for OST have substantial trial and appellate obligations between now and December 15, 2026, including: dispositive motions, expert challenges, and motions in limine in *Stephen and Gayla Sajben et al. v. Sinclair Buick-GMC Truck, Inc., d/b/a Dave Sinclair Buick GMC Truck et al.*, No. 24SL-CC00007 (Mo. Cir. Ct.), due October 30, 2026 through December 30, 2026; a petition for writ of certiorari in *Weston Prince, Bay County Treasurer v. Carrie Ann Reinhardt*, No. 26A436 (Supreme Court of the United States), due November 19, 2026; an opening merits brief in *Fadi Fakhreddine et al. v. Eric Sabree*, No. 26-1680 (6th. Cir.), due

December 1, 2026; an opening merits brief in *Tonya Bowles et al. v. Wayne*, No. 26-1588 (6th. Cir.), due November 11, 2026, and a dispositive motions hearing in *Flummerfelt v. City of Taylor et al.*, No. 4:22-cv-10067-FKB-CI (E.D. Mich.), on November 10, 2026.

8. Applicants' counsel are heavily engaged in additional litigation and legal matters not specifically referenced above.

For the foregoing reasons, Applicants request an extension of 30 days, to and including January 14, 2027, of the deadline for the filing of a petition for writ of certiorari in this matter.

Respectfully submitted,



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