No. 26A-_____

In The Supreme Court of the United States

AMERICARE HEALTHCARE SERVICES, INC.; DILLI ADHIKARI,

Petitioners,

v.

UNITED STATES DEPARTMENT OF LABOR,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Brett Kavanaugh, Associate Justice and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30 of this Court, Applicants respectfully request a 60-day extension of time, to and including November 9, 2026, within which to file a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit in this case. The Sixth Circuit issued its panel opinion on April 1, 2026, and denied rehearing *en banc* on June 12, 2026. A petition for a writ of certiorari is currently due on or before September 10, 2026. This application is being filed more than ten days before that date.

The Sixth Circuit's panel opinion is reported at 171 F.4th 838, and is attached as Appendix A. The Sixth Circuit's order denying rehearing *en banc* is attached as Appendix B. The Southern District of Ohio's opinion is reported at 762 F. Supp. 3d

666 and is attached as Appendix C. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Respondent does not object to this extension request.

BACKGROUND

This case raises important questions following this Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). *Loper Bright* restored the Administrative Procedure Act's presumption of independent judicial review of questions of law. It also abrogated the reasoning of prior decisions applying *Chevron* deference; the only part of *Chevron*-based decisions "still subject to statutory *stare decisis*" are holdings that "*specific* agency actions are lawful." *Loper Bright*, 603 U.S. at 412 (emphasis added). But the Sixth Circuit below rejected Applicants' challenge to the Department of Labor (DOL)'s interpretation of a Fair Labor Standards Act (FLSA) exemption without determining the single best meaning of that exemption, contravening *Loper Bright*, as well as bedrock party presentation principles, and will be worthy of review.

The FLSA generally requires employers to pay overtime to employees "in domestic service." 29 U.S.C. § 207(*l*). But the law exempts live-in domestic employees: the overtime requirement "shall not apply with respect to … any employee who is employed in domestic service in a household and who resides in such household." *Id.* § 213(b)(21). It is undisputed that Applicants' employees are live-in domestic workers. And the exemption is mandatory ("shall not apply"). So "eligibility isn't up to the 'judgment' or 'opinion' of the" agency. *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 421 (6th Cir. 2024). Accordingly, after *Loper Bright*, the Sixth Circuit's "responsibility" was "to honor the statute's 'single, best meaning,' 'fixed at the time of enactment,' whether the agency has the same view or not." *Pickens v. Hamilton-Ryker IT Sols., LLC*, 133 F.4th 575, 588 (6th Cir. 2025) (Sutton, C.J.) (citation omitted). And under the live-in exemption's single "best meaning," which DOL followed as the best reading when the law was enacted and for nearly forty years thereafter, that exemption ends this case.

In the decision below, the Sixth Circuit instead deferred to DOL's atextual proclamation that so-called "third-party employers" outside the household, such as defendants, "may not avail themselves of the" live-in exemption. 29 C.F.R. § 552.109(c). That was a "rewrite" of the statutory exemption's text. App.23a (Bush, J., concurring.). To defend that rewrite, DOL relied upon its general grant of rulemaking authority. Pub. L. No. 93-259, § 29(b), 88 Stat. 55, 76 (1974); 29 U.S.C. § 202 (note). This argument conflicts with a "faithful reading of *Loper Bright*," so rejecting it should have been "easy." App.27a (Bush, J., concurring). The live-in exemption contains no delegation to the agency, let alone a clear one. Far from allowing discretion, the live-in exemption is mandatory: Overtime "shall not apply with respect to … any employee …." 29 U.S.C. § 213(b)(21). This text "indicates a command that admits of no discretion on the part of the person instructed to carry out the directive." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661 (2007) (citation omitted). Implementing this exemption requires no administrative skill, just legal interpretation and adjudicative fact. That has been the "field" of Article III courts "for at least 221 years." *Loper Bright*, 603 U.S. at 412.

Instead of charting the "easy" (lawful) course, however, the Sixth Circuit disregarded *Loper Bright* and improvised novel theories to defer. The Sixth Circuit panel relied upon a delegation tucked into a parenthetical of a *different* FLSA exemption in a *different* subsection to claim that the agency had the express and clear delegation that *Loper Bright* requires. But as can happen with legal theories never tested through the adversarial process or advanced by the agency in the administrative record, the Sixth Circuit panel opinions suffer from crippling flaws. The panel majority rewrites the live-in exemption based upon a theory that DOL disclaimed and that bears no resemblance to DOL's live-in regulation. The concurring opinion rests upon a different interpretation that DOL also never advanced and that would cripple the FLSA's overtime provisions in ways the concurrence never considers. Both opinions pay only lip service to *Loper Bright*'s requirement of a clear express delegation, and trample basic principles of party presentation and the *Chenery* doctrine, which establishes the "foundational principle of administrative law that a court may uphold agency action only on the grounds that the agency invoked when it took the action." *Michigan v. EPA*, 576 U.S. 743, 758 (2015).

The majority then compounded the error by concluding that DOL's putative delegation includes the power to "rewrite … the exemption." App.23a (Bush, J., concurring). The basis for this rewrite is *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007), a *Chevron* case about a different FLSA exemption upholding the *opposite* interpretation. The Sixth Circuit concluded that *Coke* greenlights "flipping back and forth in its regulation of an industry," App.27a (Bush, J., concurring), even after *Loper Bright*. But extending reasoning based upon *Chevron* and *Brand X* rather than following *Loper Bright* turns *stare decisis* on its head, threatening to subject parties to "an eternal fog of uncertainty." *Loper Bright*, 603 U.S. at 411. This issue therefore will be worthy of review and correction. It is also exceptionally important because "*Chevron* was cited in more than 18,000 federal-court decisions." *Id.* at 472 (Kagan, J., dissenting) (citation omitted). As a result, the *stare decisis* effect of *Chevron*-deference cases will be a constantly recurring issue.

The Sixth Circuit's departure from the administrative record and party presentation will also be worthy of review because it conflicts with *SEC v. Chenery Corp.*, 318 U.S. 80 (1943), and *United States v. Sineneng-Smith*, 590 U. S. 371 (2020). This Court has, multiple times in this term alone, summarily reversed lower courts' failure to adhere to party presentation principles. *See Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285 (2026); *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) (per curiam). DOL relied only upon its general rulemaking authority to justify its regulation interpreting the live-in exemption. But the majority improvised a novel theory DOL twice *disclaimed* during argument: that a delegation in a separate exemption extended to the live-in exemption insofar as the exemptions overlapped in regulatory coverage. Just like the Fourth Circuit in *Margolin*, 146 S. Ct. at 1288, the Sixth Circuit "transformed" DOL's argument, depriving Americare of any chance to address these newfound theories and flouting this Court's mandate, delivered twice in just the past six months, that courts must adhere to the party presentation rule.

In addition, the Sixth Circuit ignored the *Chenery* doctrine by relying upon an interpretive theory that neither party advanced.

Precedent, text, and party presentation principles thus all point in the same direction: the Sixth Circuit's interpretation of the live-in exemption is grievously wrong.

REASONS JUSTIFYING AN EXTENSION OF TIME

Good cause exists for extending the time in which Applicants can file their petition for a writ of certiorari.

First, as noted above, this case raises numerous cert-worthy legal issues requiring additional time to fully brief. In particular, this case raises: whether the Sixth Circuit (1) ignored *Loper Bright*'s presumption of independent judicial review, (2) misapplied *Loper Bright*'s stare decisis instructions, and (3) flouted party presentation principles and the *Chenery principle* in doing so. Those arguments deserve careful treatment and development in Applicants' forthcoming petition.

Second, a 60-day extension is reasonable and necessary. Counsel of record for Applicants has numerous other deadlines in pending cases during the intervening period. For example, counsel is:

- Drafting an opening brief due July 15, 2026, in *American Energy Association, et al., v. Burgum*, *et al.*, No. 26-60240 (5th Cir.).
- Drafting an *amicus curiae* brief due July 22, 2026, in *Raycraft v. Lopez Campos*, No. 25-1415 (U.S.).

- Drafting a reply in support of a motion to dismiss due July 24, 2026, in *NCAAP v. xAI*, No. 26-cv-74 (N.D. Miss.).
- Drafting an opening brief due July 31, 2026, in *REH Company, LLC v. EPA*, Nos. 25-1180 *et seq.* (D.C. Cir.).
- Preparing to second-chair oral argument on August 5, 2026, in *Consumers' Research, et al. v. FCC*, No. 26-60511 (5th Cir.).
- Preparing for a preliminary injunction hearing on August 24, 2026, in *NCAAP v. xAI*, No.26-cv-74 (N.D. Miss.).

Counsel also has a pre-planned vacation in late August and early September. Counsel is also actively exploring retaining other Supreme Court counsel and needs additional time to consider that option.

The requested 60-day extension would cause no prejudice to Respondent, who has advised that Respondent has no objection to the extension.

PRAYER

For these reasons, Applicants respectfully request that the Court extend the time to file their petition for a writ of certiorari by 60 days, to and including November 9, 2026.

Dated: July 15, 2026

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants make the following disclosures: Americare Healthcare Services, Inc. is not a publicly held corporation, and no publicly held corporation has any interest in it.

Dated: July 15, 2026

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