IN THE
SUPREME COURT OF THE UNITED STATES

SANJUANITA SEPULVEDA, *et al.*,
Petitioners,
v.
ALLEN FAMILY FOODS, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners present two questions for review:

1. When calculating compensable time under the Fair Labor Standards Act ("FLSA"), does section 203(o)'s exclusion of "time spent in changing clothes" apply to time spent donning and doffing protective equipment that is put on over unchanged clothes – a question on which multiple circuits have split?

    A. Does the plain language of the FLSA's exclusion for "time spent in changing clothes" apply to time spent putting protective equipment on top of clothes – a question on which multiple circuits have split?

    B. Does the doctrine of statutory interpretation that remedial statutes should be construed liberally in favor of those they are intended to protect apply to the "changing clothes" exclusion – a question on which multiple circuits have split?

2. Does the "continuous day rule" require that employees be compensated for time spent donning, doffing, and sanitizing equipment after the workday has indisputably begun and before it has ended?

LIST OF PARTIES

The parties below are listed in the caption. This case was filed as a class action pursuant to section 216(b) of the FLSA. Pursuant to the statute, approximately 250 current and former Allen employees opted into the plaintiff class. The employees in this class are the petitioners. A complete list of class plaintiffs can be found in the caption to the Fourth Circuit's opinion in this case, attached hereto as Appendix B.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6, petitioners state that all members of the plaintiff class are individuals.

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OPINIONS BELOW

The United States District Court for the District of Maryland granted Allen's motion for summary judgment in an order issued on September 16, 2008. The workers timely appealed the decision to the United States Court of Appeals for the Fourth Circuit, which affirmed the district court's order granting Allen's motion for summary judgment. 591 F.3d 209 (4th Cir. 2009).

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit, affirming the decision of the district court granting defendant's motion for summary judgment, was handed down on December 29, 2009. Because a timely petition for rehearing was denied on February 9, 2010, the initial deadline for filing this petition was May 10, 2010. The Court has now extended that deadline to July 9, 2010. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Title 29 United States Code, Section 203(o), the interpretation of which is at issue in this case, provides:

Hours worked.

In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective bargaining agreement applicable to the particular employee.

STATEMENT OF THE CASE

In January 2007, several chicken-processing workers filed this suit against Allen Family Foods, Inc. ("Allen") under the Fair Labor Standards Act ("FLSA") in the United States District Court for the District of Maryland. All of the workers work or have worked at Allen's Harbeson, Delaware plant on the production line that conveys chickens through the plant for killing, cleaning, processing, and packaging. As part of their work, Allen requires the workers to don an array of Personal Protective Equipment ("PPE") before they take their place on the production line each workday. At the start of each workday, the workers go to their lockers and are required to don over their regular clothing the following items of PPE: USDA-required rubber gloves; plastic sleeves; safety arm shields; steel-toe shoes; USDA-required smock; USDA-required plastic apron; safety glasses; ear plugs; bump cap; and USDA-required hair net. These items protect Allen's chicken products from contamination, and some of the PPE items also protect the workers from workplace injuries.

After donning this gear, the workers walk from their lockers to their respective stations at the plant. Prior to taking their place on the line, the workers must sanitize the gear. Later, at the beginning of their unpaid 30-minute lunch break, the workers walk from the production line to the lunch room and must doff much of the PPE to avoid contaminating it at lunch and to avoid unsanitary conditions in the lunch room. After lunch, the

workers are required to re-don the PPE, walk back to the production area, re-sanitize the PPE, and be in place on the production line by the end of the unpaid lunch break. Failure to don the PPE and follow the procedures described above can subject an Allen worker to discipline and possible termination.

The workers challenged Allen's denial of compensation for time they spent donning and doffing Personal Protective Equipment ("PPE"), sanitizing the PPE, and walking between their lockers and their line positions at the beginning and end of each workday. They also challenged Allen's denial of compensation for time spent performing these activities at the beginning and end of the lunch break. The district court provisionally certified the claim as a collective action, and plaintiffs notified all potential class members that they could "opt in" to the action pursuant to 29 U.S.C. § 216(b). Approximately 250 workers opted into the action.

After liability-related discovery, the parties filed cross-motions for full or partial summary judgment. The main controversy in these motions centered on interpretation of section 203(o) of the FLSA, which permits an employer to deny compensation for time spent "changing clothes or washing at the beginning or end of each workday" if the employer and union agree to exclude such time "by the express terms of or by custom or practice under a bona fide collective bargaining agreement."

Because the workers in the Harbeson plant are employed pursuant to a collective bargaining agreement, Allen argued that donning and doffing the PPE constituted "changing clothes" within the meaning of section 203(o), and that time spent donning and doffing was thus permissibly excluded from compensation by custom or practice under the collective bargaining agreement. The workers asserted that donning and doffing of such specialized protective gear over one's ordinary clothes could not be held to constitute "changing clothes" for purposes of the statute. Decisions of this Court and the Fourth Circuit establish that the remedial purpose of the FLSA requires courts to construe exemptions from FLSA coverage narrowly and to find in favor of coverage to the greatest extent possible consistent with Congressional intent. The workers argued that, given the plain meaning and common understanding of the phrase "changing clothes," Allen had not met its burden to show that Congress had clearly intended the exemption in section 203(o) to encompass donning and doffing of specialized protective gear over an employee's regular clothes, which remain unchanged. Thus, established principles of statutory interpretation precluded a holding that 203(o) applies to the donning and doffing of the workers' PPE.

In the alternative, the workers argued that even if 203(o) were held to bar their claim for compensation for time spent donning and doffing PPE at the beginning and end of each workday, nothing in the statute permitted Allen to deny

compensation for time spent walking to and from the production line, sanitizing the PPE, and donning and doffing the PPE at times other than the beginning and end of the day. Application of this Court's clearly established "continuous day rule" also entitles the workers to compensation for time spent in these activities during the workday. Thus, at a minimum, the court should have permitted the workers to proceed with their claims with respect to time spent walking, sanitizing the PPE, and donning and doffing PPE at the beginning and end of the lunch break.

The district court ruled in Allen's favor, holding that section 203(o) barred the workers' claims. It entered final judgment granting Allen's motion for summary judgment. On appeal, the Fourth Circuit held that donning and doffing the PPE constituted "changing clothes" within the meaning of section 203(o) and affirmed the district court decision. The Fourth Circuit's opinion did not apply the accepted doctrine that the FLSA is a remedial statute to be construed liberally in favor of coverage. It also failed to discuss its decision not to apply the continuous day rule to the workers' claims regarding donning, doffing, sanitizing, and walking at times other than the beginning and end of each workday.

This Petition seeks to have the Court review the holding below that donning and doffing the PPE constitutes "changing clothes" within section 203(o), and that this section applies to bar the workers' claims. The workers also seek to have the

Court review the Fourth Circuit's failure to apply the established remedial standard of statutory interpretation to the reading of section 203(o). There is a conflict among the circuits regarding these two legal issues. This Petition also seeks to have the Court review the Fourth Circuit's failure to apply the "continuous day rule" to entitle the workers to compensation for time spent donning, doffing, and sanitizing the PPE and walking at times other than the beginning or end of each workday.

REASONS FOR GRANTING THE PETITION

The issues presented for review in this case involve important questions of federal statutory interpretation with regard to section 203(o) of the FLSA. This petition is of exceptional financial importance to the thousands of low-income poultry workers in the United States. In addition to these workers, the principles at issue in this petition affect thousands more, almost all of whom are among the low-income workers whom the FLSA was enacted to protect. There is a distinct split among the circuits on the important issue of whether donning and doffing protective gear constitutes "changing clothes" within the meaning of section 203(o). This split creates great uncertainty for employers and employees attempting to discern their rights and obligations under the FLSA and for the courts charged with adjudicating these cases. Review by this Court is necessary to resolve the circuit split on this important issue.

In addition, there is a split among the circuits on the issue of which principles of statutory interpretation govern definitional exemptions from FLSA coverage. As described below, decisions of this Court have indicated that, in light of the statute's remedial purpose, definitional exemptions are to be interpreted in the same manner as express exceptions from coverage — that is, both types of exemptions are to be narrowly construed against the employer seeking to assert them. The Ninth Circuit has adopted this approach in a section 203(o) case. *See Alvarez v. IBP, Inc.* 339 F.3d 894, 905 (9th Cir. 2003), *aff'd in part and rev'd in part on other grounds*, 546 U.S. 21 (2005). In contrast, the Eleventh and Fourth Circuits have adopted the view that this remedial standard of interpretation does not apply to definitional exemptions from FLSA coverage. Thus, on this issue, the Fourth Circuit opinion below and the Eleventh Circuit directly conflict with the Ninth Circuit and this Court's established precedent. Review by this Court is necessary to clarify and resolve a split among the circuits regarding the appropriate standard of statutory interpretation applicable to definitional exemptions from coverage under the FLSA.

Finally, the Fourth Circuit failed to address the workers' alternative argument that, even if section 203(o) were held to bar their claims for time spent donning and doffing PPE at the beginning and end of each workday, the "continuous day rule" established by this Court would nonetheless entitle them to compensation for time spent walking and

for time spent donning, doffing, and sanitizing the PPE at times other than the beginning or end of each workday. Review by this Court is necessary to clarify that the continuous day rule applies to require compensation for activities performed during the internal part of the workday, regardless of whether 203(o) exempts some of these activities from coverage when performed at the beginning and end of the day.

I. REVIEW IS WARRANTED TO RESOLVE A CONFLICT AMONG THE CIRCUITS CONCERNING WHETHER SECTION 203(o)'S EXCLUSION FOR TIME SPENT "CHANGING CLOTHES" APPLIES TO DONNING AND DOFFING OF PROTECTIVE EQUIPMENT.

A. In Conflict With Other Circuits, the Court Below Misinterpreted the Plain Language of Section 203(o) by Holding That Time Spent Donning and Doffing Protective Equipment on Top of Clothes Was "Time Spent in Changing Clothes."

There is a conflict among the circuits on the issue of whether donning and doffing Personal Protective Equipment ("PPE") constitutes "changing clothes" within the meaning of section 203(o). At least seven federal courts have held that donning and doffing protective gear does not fall within the scope of section 203(o)'s "changing clothes" exclusion. The Ninth Circuit has held that

section 203(o) does not apply to time spent donning and doffing PPE in the beef-processing industry. *Alvarez,* 339 F.3d at 905. In addition, district courts within the Fourth, Seventh, Ninth, and Eleventh Circuits have held that "changing clothes" does not include donning and doffing protective equipment. *Gonzalez v. Farmington Foods, Inc.*, 296 F. Supp. 2d 912, 930-31 (N.D. Ill. 2003); *Fox v. Tyson Foods, Inc.*, 2002 WL 32987224 *6 (N.D. Ala. 2002); *Spoerle v. Kraft Foods Global, Inc.*, 527 F. Supp. 2d 860, 866-68 (W.D. Wisc. 2007); *Lemmon v. City of San Leandro*, 538 F. Supp. 2d 1200, 1205 (N.D. Cal. 2007); *Maciel v. City of Los Angeles*, 542 F. Supp. 2d 1082, 1091 (C.D. Cal. 2008); *Perez v. Mountaire Farms, Inc.*, 2008 WL 2389798 at *5 (D. Md. 2008).

In direct contrast to these decisions, the Fourth, Fifth, and Eleventh Circuits have now held that donning and doffing protective gear constitutes "changing clothes" within the meaning of section 203(o). *Allen v. McWane*, 593 F.3d 449, 454 (5th Cir. 2010); *Sepulveda v. Allen Family Foods, Inc.*, 591 F.3d 209, 218 (4th Cir. 2009); *Anderson v. Cagle's, Inc.*, 488 F.3d 945, 957 (11th Cir. 2007), *cert. denied*, 128 S. Ct. 2902 (2008) ("*Cagle's*"). Numerous district courts have also adopted this view. *See Sisk v. Sara Lee Corp.*, 590 F. Supp. 2d 1001 (W.D. Tenn. 2008); *Kassa v. Kerry*, 487 F. Supp. 2d 1063 (D. Minn. 2007); *Davis v. Charoen Pokphand*, 302 F. Supp. 2d 1314 (N.D. Ala. 2004); *Saunders v. John Morrell & Co.*, 1991 WL 529542 (N.D. Iowa 1991). The positions taken by the various circuits and their respective district

courts on this federal statutory provision are in direct conflict. This conflict has created great uncertainty for employers and employees attempting to discern their rights and obligations under the FLSA and for the courts charged with adjudicating these cases. Review by this Court is necessary to resolve the circuit split on this important issue.

B. In Conflict With Other Circuits, the Court Below Failed to Apply the Doctrine of Statutory Interpretation That Remedial Statutes Should Be Construed Liberally in Favor of Those They Are Intended to Protect.

The Fourth Circuit's opinion highlights a second split among the circuits regarding the appropriate standard of statutory interpretation in FLSA cases. On petition for rehearing, the workers argued that the Fourth Circuit failed to apply the appropriate standard of statutory interpretation to its reading of section 203(o). The court did so based in large part on an opinion of the Eleventh Circuit, which departed from the traditional standard of interpretation in FLSA cases. *See Cagle's*, 488 F.3d at 957. The case at bar and *Cagle's*, along with their progeny, have created a direct conflict with other circuits on this issue.

The standard for statutory interpretation of the FLSA flows from the long-accepted doctrine that a remedial statute is to be construed liberally in favor of those whom the statute is intended to

protect. This Court's precedent thus dictates that exceptions to FLSA coverage "are to be narrowly construed against the employers seeking to assert them." *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960), *citing Mitchell v. Kentucky Fin. Co.*, 359 U.S. 290, 295 (1959). Some courts have interpreted these cases to require that they apply the same standard of interpretation to all exemptions from FLSA coverage, regardless of whether the exemption is created by the "Definitions" section of the statute ("Definitional Exemptions") or the "Exceptions" section of the statute ("213 Exemptions"). 29 U.S.C. § 213. These courts have held that there is no practical reason to differentiate between Definitional and 213 Exemptions, and have thus applied the same standard of interpretation to both categories. *See, e.g., Alvarez*, 339 F.3d at 905 (applied to interpretation of section 203(o)).

In direct contrast to this view, the Eleventh Circuit has taken the view, adopted by the Fourth Circuit in this case, that the remedial standard of interpretation applies only to inquiries into the meaning of section 213 of the FLSA. *Cagle's* 488 F.3d at 957; *Sepulveda*, 591 F.3d at 215. *Cagle's* makes a distinction between section 213, which lists employer exemptions under the Act, and the rest of the Act, which in large part defines employer coverage. *Cagle's* 488 F.3d at 957.

At least one federal district court has noted that, in the context of section 203(o), "reviewing courts are divided as to whether the provision

operates as an exemption or merely a definition and prerequisite for a finding of hours worked." *Gatewood v. Koch Foods of Mississippi, LLC*, 569 F. Supp. 2d 687, 692 (S.D. Miss. 2008). This split has generated significant conflict among the lower courts. Some courts have rejected *Cagle's* approach as illogical, holding that because there is no practical difference from the employee's perspective between being "exempted" from FLSA coverage and being "defined" out of coverage, the same standard of interpretation should apply to both categories of exemptions. For example, one case from the Middle District of Pennsylvania referred to Third Circuit precedent interpreting portions of section 203 as exceptions and concluded that "the language of § 203(o) demonstrates that it is an exclusionary clause of the FLSA." *In re Cargill Meat Solutions*, 2008 U.S. Dist. LEXIS 31824 at *44 (M.D. Pa. April 10, 2008). A district court in Maryland compared the standard of interpretation applied in *Alvarez* with the restrictive view applied in *Cagle's* and concluded, "*Alvarez* and its progeny, have the better of this dispute." *Perez*, 2008 WL 2389798 at *4. In contrast, other courts have chosen to follow *Cagle's* more restrictive standard of interpretation to Definitional Exemptions. *See, e.g., Salazar v. Butterball, LLC*, 2009 WL 6048979 (D. Colo. 2009).

While *Cagle's* suggests that a pro-worker orientation should not apply to an interpretation of section 203, the "Definition" subchapter, 488 F.3d at 957, Supreme Court precedent implies the contrary, that the remedial standard of interpretation applies to all forms of FLSA issues.

Although express application of this standard most commonly is noted in cases involving 213 Exemptions, courts apply the remedial standard to cases involving other aspects of FLSA interpretation. The Court has stated that "within the tests of coverage fashioned by Congress, the Act has been construed liberally." *Mitchell v. Lublin, McGaughy & Assoc.*, 358 U.S. 207, 211 (1959); *see also Donovan v. I-20 Motels, Inc.*, 664 F.2d 957 (5th Cir. 1981)("The FLSA is to be liberally construed to provide broad coverage."). The Court has applied this standard to interpret numerous FLSA provisions. For example, in deciding whether employees "engaged in commerce" under sections 206 and 207 of the Act, the Court required that these provisions also be "construed liberally to apply to the farthest reaches consistent with congressional direction." *Mitchell*, 358 U.S. at 211.

Similarly, when interpreting the terms "employee" and "production" under the Definitions subchapter, this Court held that it must adopt "a realistic attitude, recognizing that we are dealing with human beings and with a statute that is intended to secure to them the fruits of their toil and exertion." *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 592 (1944). Accordingly, it stated that "these provisions, like the other portions of the Fair Labor Standards Act, are remedial and humanitarian in purpose" and that "such a statute must not be interpreted or applied in a narrow, grudging manner." *Id.* at 597.

Notwithstanding this precedent, the *Cagle's* line of cases has generated significant confusion and inconsistency among the lower courts regarding the correct standard of interpretation in FLSA cases. Indeed, the Fourth Circuit's opinion in this case conflicts with its own prior decisions. In one FLSA case, the Fourth Circuit had occasion to resolve questions of both a 213 Exemption (section 213(a)(2)) and a Definitional Exemption (section 203(s)(3)) in the same case. *Schultz v. W.R. Hardin & Son, Inc.*, 428 F.2d 186 (4th Cir. 1970). In *Schultz*, the Fourth Circuit applied a liberal standard favoring the employee to both sections of the statute, holding that "the Act's 'terms of coverage' must 'be liberally . . . construed.'" *Id.* at 189. In another case, the Fourth Circuit held that "[e]xemptions from or exceptions to the Act's requirements are to be narrowly construed against the employer asserting them." *Monahan v. County of Chesterfield, Va.*, 95 F.3d 1263, 1267 (4th Cir. 1996) ("FLSA should be given a broad reading, in favor of coverage.") The contrast between these earlier Fourth Circuit opinions and its opinion in this case illustrates the extent of the uncertainty among the courts on this issue.

Which standard of statutory interpretation applies to section 203(o) is critical to resolution of this case. Under the remedial standard of interpretation, Allen would have the burden of establishing by "clear and affirmative evidence" that the section 203(o) exemption applies to it in this case. *Birdwell v. City of Gadsden*, 970 F.2d 802, 805 (11th Cir. 1992). In addition, it would

have the burden of establishing that its employees are "clearly and unmistakably within the terms and spirit of the exemption." *Brock v. Norman's Country Mkt., Inc.*, 835 F.2d 823, 826 (11th Cir. 1988). Neither the plain meaning of the statute nor the legislative history indicates that Congress intended section 203(o) to apply to an employee's donning and doffing of special, cumbersome protective equipment over his or her ordinary clothes. *Accord Alvarez*, 339 F.3d at 905 (applied to interpretation of section 203(o)). Given the absence of any evidence indicating that Congress intended section 203(o) to apply to donning and doffing protective gear, Allen did not and could not meet this strict burden of proof. As such, the Fourth Circuit's decision not to apply the remedial standard of interpretation was determinative in this case.

As described above, several circuits, including the Eighth and Ninth Circuits, have interpreted precedent of the Court to require that they apply the remedial standard of statutory interpretation to all sections of the FLSA, including Definitional Exemptions. In contrast, the Eleventh and now the Fourth Circuits have declined to apply the remedial standard to Definitional Exemptions. These decisions have created a distinct split among the circuits with regard to whether the remedial standard of interpretation applies to Definitional Exemptions. This split has created uncertainty among the courts charged with interpreting section 203(o) and will create further uncertainty with regard to other sections of the FLSA. Review by

this Court is necessary to resolve the conflict between the circuits on this important and far-reaching issue.

II. REVIEW IS WARRANTED TO CLARIFY THAT THE "CONTINUOUS DAY RULE" REQUIRES THAT EMPLOYEES BE COMPENSATED FOR TIME SPENT DONNING, DOFFING, AND SANITIZING EQUIPMENT AFTER THE WORKDAY HAS INDISPUTABLY BEGUN AND BEFORE IT HAS ENDED.

The workers also seek review of the Fourth Circuit's failure to apply this Court's "continuous day rule" to this case to permit the workers to proceed with their claims for compensation for time spent donning, doffing, and sanitizing PPE and walking at times other than the beginning and end of each workday. Even if this Court were to hold that section 203(o) bars some of the workers' claims for compensation, such a bar would only apply to time spent changing clothes and washing "at the beginning or end of each workday." Therefore, Section 203(o) cannot be a bar to the workers' claims to compensation for time worked during the internal part of the workday. *Burks v. Equity Group*, 571 F. Supp. 2d. 1235, 1242 (M.D. Ala. 2008); *see also Alvarez*, 546 U.S. at 29.

This Court has adopted a "continuous day" rule, pursuant to which workers are entitled to compensation for all work time between the first

principal activity of the workday and the last – less a bona fide lunch break. *Alvarez*, 546 U.S. at 29.

Sanitizing protective gear is a principal activity for which workers are entitled to compensation, and at least one court has applied this principle in a FLSA case. *Burks*, 571 F. Supp. 2d at 1245. Section 203(o)'s exclusion for "washing" only precludes compensation for a worker washing his body, not sanitizing PPE. *See Gatewood,* 569 F. Supp. 2d at 702; U.S. Department of Labor Advisory Letter, FLSA 2002-2 (June 6, 2002), at 1 (attached as Appendix D).

Thus, in this case, the workers' "continuous day" would, at the latest, begin when the PPE is initially sanitized at the beginning of the day and end when the PPE is sanitized for the final time at the end of the day. The continuous, compensable day would therefore, at a minimum, include all time spent (i) initially sanitizing PPE, (ii) walking from that location to the production line,[1] (iii) partial doffing, donning, and sanitizing of the PPE before and after lunch,[2] (iv) walking to and from

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[1] In *Alvarez*, the Court held walking to be a compensable principal activity. 546 U.S. at 34.

[2] In *Burks v. Equity Group*, the district court held that section 203(o) was not a bar to an employee's compensation claim for time spent donning, doffing, and sanitizing protective equipment during his lunch period. In so holding, the court recognized that, by its terms, section 203(o) did "not apply to activities performed during the continuous workday." 571 F. Supp. 2d 1235, 1248 (M.D. Ala. 2008). *See also Fox,* 2002 WL 32987224 at *13 (regarding claim of working in poultry plant during meal break).

lunch, (v) walking from the line to the location where PPE is sanitized at the end of the day, and (v) sanitizing the PPE for a final time at the end of the workday. *See Gatewood*, 569 F. Supp. 2d at 702 n.32 (noting that because section 203(o) only applied to changing clothes at the beginning and end of each workday, "the Plaintiffs' remaining claims related to midday work breaks and unpaid waiting time at the beginning of each day are not impacted by" the court's section 203(o) analysis).

The Fourth Circuit erred in failing to apply the continuous day rule to this case. Indeed, it failed to discuss application of the rule at all; its only explanation for dismissing the workers' internal workday claims was in a footnote, where (with no analysis or factual basis) the court assumed that the time spent donning, doffing, sanitizing, and walking during the internal part of the workday was non-compensable as part of a bona fide meal period, or, in the alternative, *de minimis*. However the continuous day rule dictates that activities internal to the continuous workday cannot be carved out and discounted.

Even without including the time spent donning and doffing the PPE at the beginning and end of each workday, the workers spend considerable time internal to the workday donning, doffing, and sanitizing the PPE, and walking to and from their lockers to do so. The continuous day rule dictates that the workers are, at a minimum, entitled to compensation for the time internal to the workday spent on these activities. The Fourth

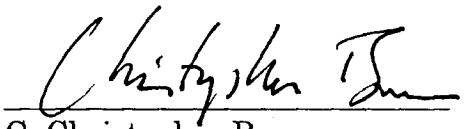
Circuit's failure to apply this rule to the present case directly contradicts clearly established precedent of this Court.

Failure to reverse the Fourth Circuit's unjustified dismissal of the workers' internal workday claims would have significant financial implications for thousands of workers, most of whom are the very low-wage employees whom the FLSA was primarily enacted to protect. Review of this Court is necessary to clarify that the continuous day rule applies to entitle workers to compensation for all activities that fall within the internal part of the continuous workday, even in cases where section 203(o) exempts some of these activities from coverage when performed at the beginning or end of the day.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that the Court grant review of this matter.

Respectfully submitted,



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