IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASSANDRA OSVATICS, on behalf of herself and all others similarly situated, Plaintiff, v. LYFT, INC., Defendant.	Civil Action No. 1:20-cv-01426-KBJ

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO CERTIFY THE COURT'S MARCH 31, 2021 ORDER FOR INTERLOCUTORY REVIEW PURSUANT TO 28 U.S.C. § 1292(b)

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INTRODUCTION

Plaintiff Cassandra Osvatics respectfully requests that the Court certify its March 31, 2021 Order granting Lyft, Inc.'s ("Lyft") Motion to Compel Individual Arbitration and Stay Proceedings Pending Arbitration ("Order"), ECF No. 47, for interlocutory review pursuant to 28 U.S.C. § 1292(b). Circuit intervention is required to ensure a uniform rule for workers, employers, and courts in this district. This Order is especially apt for interlocutory review because it rules on a clear legal issue that is being decided in different ways in different courts, and that in all likelihood will otherwise escape appellate review.

The Order satisfies all three requirements for § 1292(b) certification. First, the Order presents a clear controlling issue of law: whether Lyft drivers are engaged in interstate commerce such that they are exempt from arbitration under Section 1 of the Federal Arbitration Act ("FAA"). Second, courts have come to widely disparate answers to the Section 1 exemption question, requiring circuit guidance. As summarized in the Court's Order, at least 11 district courts have examined Section 1 as applied to rideshare drivers: some found that rideshare drivers are not sufficiently engaged in interstate commerce, some found that they are, and some found that threshold discovery is required to answer the question. Third, absent appeal, the parties may be forced to litigate this case to judgment twice: individually in arbitration, and then as a class action in court should the D.C. Circuit overturn the Order on appeal after arbitration. Thus, resolution of this threshold issue now has the potential to materially advance this litigation and save the parties significant time and cost.

Here, immediate appeal is especially important because the parties' underlying dispute raises issues of exceptional importance. Plaintiff challenges Lyft's uniform policy of classifying its D.C. drivers as independent contracts and, because of that classification, its failure to pay

them sick leave both during and before the current pandemic. Without the opportunity to challenge the threshold decision compelling her claims into arbitration, Lyft's policy will escape systemic scrutiny outside of Plaintiff's individual claims, and thousands of Lyft drivers will be denied their chance to address the merits of Lyft's employment practices, perhaps forever.

Together, these circumstances "justify a departure from the basic policy of postponing appellate review until after the entry of final judgment." *Gov't of Guam v. United States*, No. 17 Civ. 2487, 2019 WL 1003606, at *4 (D.D.C. Feb. 28, 2019) (Jackson, J.) (quoting *APCC Servs., Inc. v. Sprint Commc'ns Co.*, 297 F. Supp. 2d 90, 95 (D.D.C. 2003)). Accordingly, for the reasons stated below, the Court should certify the Order for immediate appellate review.

BACKGROUND

On May 29, 2020, Plaintiff filed a class action complaint "on behalf of all drivers who work or worked for Lyft in the District of Columbia for at least 90 days" between the start of Lyft's operation in the District of Columbia and final judgment. ECF No. 2 (Compl.) ¶ 6. Plaintiff alleged that Lyft violated the D.C. Accrued Safe and Sick Leave Act by failing to provide Plaintiff and the proposed class paid sick leave of up to seven days per calendar year. *See id.* ¶ 93.

Shortly after Plaintiff filed her complaint, Lyft moved to compel Plaintiff's claim to individual arbitration pursuant to the FAA and, if the FAA were deemed inapplicable, under the D.C. Revised Uniform Arbitration Act ("RUAA"). ECF No. 6. Plaintiff argued in response that the FAA does not apply to her claims or those of the proposed class because they fell within the Section 1 exemption for transportation workers engaged in interstate commerce. ECF No. 20, at 7-22. Plaintiff also argued that, if the FAA does not apply, there is no basis in the arbitration clause to apply the RUAA, the RUAA would not apply because the clause was a mandatory

consumer arbitration agreement, and the arbitration clause is unenforceable on public policy grounds and/or unconscionable. *Id.* at 22-32. In the alternative, Plaintiff requested limited discovery on the application of the Section 1 exemption and formation. *Id.* at 36-38.

On March 31, 2021, the Court granted Lyft's motion. ECF No. 47. The Court issued its Memorandum Opinion setting forth the Court's reasoning on April 22, 2021. ECF No. 48 ("Mem. Op."). In its Memorandum Opinion, the Court held that Plaintiff was bound by Lyft's arbitration clause, the Section 1 exemption does not apply to Plaintiff and other rideshare drivers, and that limited discovery was not warranted. *Id.* The Court's Section 1 analysis included the legal conclusions that: (1) "the section 1 exemption is not limited to transportation workers who transport goods rather than people"; (2) "the relevant 'class of workers' must be assessed at a nationwide level rather than a specific geographic area"; and (3) engagement in interstate commerce for the purposes of Section 1 requires that the workers' services be primarily interstate in nature. *Id.* at 17, 25-27. The Order stayed this action pending the resolution of arbitration. ECF No. 47.

ARGUMENT

I. The Court's Order Meets the Requirements for § 1292(b) Certification.

The FAA expressly permits interlocutory appeals of orders staying a matter in contemplation of arbitration.[1] 9 U.S.C. § 16(b); *see also Kuehner v. Dickinson & Co.*, 84 F.3d 316, 319 (9th Cir. 1996) (endorsing interlocutory review as means for appealing arbitration

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[1] Because Plaintiff's case was stayed, the Order is not "final" for purposes of appeal under 28 U.S.C. § 1291 or 9 U.S.C. § 16. *See Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 87 n.2 (2000) ("Had the District Court entered a stay instead of a dismissal in this case, that order would not be appealable."). Courts have held that § 1292(b) is the vehicle to appeal such orders. *Johnson v. Consumerinfo.com, Inc.*, 745 F.3d 1019, 1023 (9th Cir. 2014) (collecting cases).

orders). Under § 1292(b), a district court may certify an order for interlocutory review when it (1) "involves a controlling question of law" (2) "as to which there is substantial ground for difference of opinion," and where (3) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *accord Gov't of Guam*, 2019 WL 1003606, at *4.

The guiding principle for the § 1292 considerations is a practical inquiry into the "probable gains and losses of an immediate appeal," and the factors should be applied with "flexibility." 16 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3930 (3d ed.). Certification is proper even where the district court has a strong belief that its decision is correct. *Molock v. Whole Foods Mkt. Grp., Inc.*, 317 F. Supp. 3d 1, 6 (D.D.C. 2018) (concluding that a "substantial ground for difference of opinion" existed despite "remain[ing] unpersuaded" by cases reaching opposite legal conclusions); *In re Vitamins Antitrust Litig.*, No. 99 Civ. 197, 2000 WL 33142129, at *2 (D.D.C. Nov. 22, 2000) (granting certification despite "firm[] belie[f]" that the controlling question of law was correctly decided where "the arguments in support of the opposite conclusion are not insubstantial").

Here, certification is warranted because each of the § 1292(b) factors is met, and the potential benefits of interlocutory review greatly outweigh any potential downsides to immediate appeal.

A. The Court's Order Poses a Controlling Question of Law That Warrants Appellate Review.

A "controlling question of law is one that would require reversal if decided incorrectly *or* that could materially affect the course of litigation with resulting savings of the court's or the parties' resources." *APCC Servs., Inc.*, 297 F. Supp. 2d at 95-96 (emphasis added) (quoting *Judicial Watch, Inc. v. Nat'l Energy Policy Dev. Grp.*, 233 F. Supp. 2d 16, 19 (D.D.C. 2002));

see also Wright & Miller, Federal Practice and Procedure § 3930 (describing standard). In other words, to be deemed "controlling" "[t]he resolution of an issue need not necessarily terminate an action . . . but instead may involve a procedural determination that may significantly impact the action." *APCC Servs., Inc.*, 297 F. Supp. 2d at 96 (quoting *Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2d Cir. 1990)); *see also Sokaogan Gaming Enter. Corp. v. Tushie–Montgomery Assocs., Inc.*, 86 F.3d 656, 659 (7th Cir. 1996) ("A question of law may be deemed 'controlling' if its resolution is quite likely to affect the further course of the litigation, even if not certain to do so."). An example of an order involving a significant procedural determination is an order that "could cause the needless expense and delay of litigating an entire case in a forum that has no power to decide the matter." *Kuehner*, 84 F.3d at 318-19 (holding that an appeal from an order compelling arbitration involved a "controlling of question of law" (quoting 28 U.S.C. § 1292(b)).

The Court's Order easily satisfies the first element of § 1292 because it presents a controlling issue of law: whether Lyft drivers are exempt from arbitration under Section 1 of the FAA. In resolving this issue, the Court decided a series of legal questions about Section 1, including: whether the exemption includes workers transporting persons in addition to goods, Mem. Op. at 17-21, whether the relevant "class of workers" must be assessed at a nationwide level rather than a specific geographic area, *id.* at 21-23, and what level of interstate activity by workers constitutes "engage[ment] in interstate commerce," *id.* at 27-33. A finding by the D.C. Circuit that this Court arrived at the incorrect legal conclusion as to even one of the Section 1 issues resolved by the Order could lead to its reversal and the case returning to federal court.[2]

[2] It also would "have precedential value" for other cases, which is another "factor supporting a conclusion that the question is controlling[,]" and is further discussed below. *APCC Servs., Inc.*, 297 F. Supp. 2d at 96.

Like a class certification decision, an order compelling individual arbitration because of a class waiver fundamentally impacts the nature of an action and has "enormous" impact on the scope of the case. *Sperry Rand Corp. v. Larson*, 554 F.2d 868, 871 n.3 (8th Cir. 1977) (class certification context); *see, e.g.*, *A.D. ex rel. Serrano v. Credit One Bank, N.A.*, No. 14 Civ. 10106, 2016 WL 10612609, at *1 (N.D. Ill. Dec. 11, 2016) (granting § 1292(b) certification of order compelling arbitration and noting that the order "ended litigation of the case in court and also terminated the possibility of class action certification."). The "dimensions of the trial" and the defendant's "exposure to liability" (and the relief available) vary greatly when a claim must be prosecuted individually as opposed to collectively. *Sperry Rand Corp.*, 554 F.2d at 871 n.3.[3] In either situation, the parties risk that the case will proceed to judgment on an individual basis and will have to be relitigated on a class basis – causing "needless expense and delay." *Kuehner*, 84 F.3d at 319 (interlocutory appeal could prevent "needless" litigation of case in arbitration); *cf. In re Vitamins Antitrust Litig.*, 2000 WL 33142129, at *2 (expeditious appeal could avoid "much greater delay and relitigation costs" if the appellate court reversed preliminary ruling on jurisdictional discovery).

In this, the Court's order compelling individual arbitration is akin to an order denying class certification, which prior to the adoption of Rule 23(f) of the Federal Rules of Civil

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[3] For that matter, the contrast between proceeding in arbitration as opposed to court is stark in and of itself; arbitration leads to substantively worse outcomes for plaintiffs, especially in employment law cases. *See* Katherine V.W. Stone & Alexander J.S. Colvin, Econ. Pol'y Inst., The Arbitration Epidemic 20 tbl. 1 (2015), https://files.epi.org/2015/arbitration-epidemic.pdf (quantifying lower chances of prevailing (21.4% vs. 36.4% vs. 57%) and lower average damages ($23,548 vs. $143,497 vs. $328,008) between arbitration, federal court, and state court, respectively, in employment cases). This slanted playing field is in part due to employers' repeat-player advantage when they regularly appear before the same arbitrators, *see id.* at 22, 23, as the employer generally pays the arbitrator's earnings and is able to make use of the information asymmetry (different plaintiffs represented by different counsel cannot collaborate due to confidentiality restrictions, but the single defendant knows about all of its own arbitrations).

Procedure was the type of interlocutory decision often found controlling and certified for review through § 1292(b). *See Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1708-10 (2017) (noting the use of § 1292(b) in certifying appeals of class certification decisions before the Court approved Rule 23(f)).[4]

B. There Is Substantial Ground for Difference of Opinion as to Section 1's Application to Rideshare Drivers.

The second prong of § 1292(b) – that there is a "substantial ground for difference of opinion" – is met when there is "a dearth of precedent within the controlling jurisdiction" or "where a court's challenged decision conflicts with decisions of several other courts." *Gov't of Guam*, 2019 WL 1003606, at *4 (quoting *APCC Servs.*, 297 F. Supp. 2d at 97-98). Both situations are present here.

First, the D.C. Circuit has never waded into the legal questions presented by the Order. While *Cole v. Burns International Security Services*, 105 F.3d 1465 (D.C. Cir. 1997), addresses the scope of the Section 1 exemption, the D.C. Circuit's analysis there was limited to the narrow question of whether Section 1 excludes all contracts of employment or only those of "workers engaged in the transportation of goods in commerce." *Id.* at 1472. As a result, the controlling question of law in this case would be a matter of first impression for the D.C. Circuit.[5]

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[4] *See also, e.g.*, *Marisol A. ex rel. Forbes v. Giuliani*, 104 F.3d 524, 529 (2d Cir. 1996) (endorsing § 1292(b) certification of class certification decision); *Cooper & Lybrand v. Livesay*, 437 U.S. 463, 474-75 & n. 27 (1978) (endorsing discretionary appellate review, pursuant to § 1292(b), of orders denying class certification), *superseded by rule on other grounds as stated in Microsoft Corp.*, 137 S. Ct. at 1708-09; *Sperry Rand Corp.*, 554 F.2d at 871 n.3 ("We think that the legitimate objectives of class action litigation can best be served by our disclaiming any hostility toward interlocutory certifications in situations in which the district court should reasonably conclude that the gravity of the class certification issue require(s) an expedited hearing by [the court of appeals]." (quoting *In re Cessna Aircraft Distributorship Antitrust Litig.*, 518 F.2d 213, 216 (8th Cir.))); *Wilcox v. Commerce Bank of Kan. City*, 474 F.2d 336, 339 (10th Cir. 1973) (certifying interlocutory review under § 1292(b) where "sole question before us is whether the court below abused its discretion in refusing to permit the suit to be maintained as a class action pursuant to Rule 23").

[5] The issue of the applicability of Section 1 to rideshare drivers is currently before the First and Ninth Circuits in *Cunningham v. Lyft, Inc.*, Nos. 20-1373, 20-1379, 20-1544, 20-1549, 20-1567 (1st Cir. argued Mar. 2,

Second, there a "substantial difference of opinion among judges." The Court identified 11 opinions coming to varying conclusions as to the applicability of Section 1 to rideshare drivers: five opinions that held that Section 1 does not apply to rideshare drivers, three opinions that held Section 1 does apply, and three opinions that determined the question cannot be answered without some discovery. Mem. Op. at 16-17. The disagreement extends to each aspect of the Court's Section 1 analysis. *See, e.g.*, Mem. Op. at 16-17 (noting that courts have reached opposite conclusions as to whether rideshare drivers "fall within the section 1 residual clause," while some have "ordered discovery before reaching a final determination regarding section 1's applicability to rideshare drivers"); *id.* at 22 (identifying cases that have differed on the question of whether the relevant class of workers may be limited to a "particular geographic area").[6]

Courts in this circuit have certified interlocutory appeal based on similar, or in some cases far less, conflicting authority. *See Molock*, 317 F. Supp. 3d at 5 (granting § 1292(b) certification when presented with "near even split" in district court cases on the relevant legal question with "well-reasoned" opinions on either side); *Kennedy v. District of Columbia*, 145 F. Supp. 3d 46, 52 (D.D.C. 2015) (certifying for interlocutory appeal based on contrary conclusions reached by the District of Connecticut and an EEOC Guidance Document); *Am. Ass'n of Cruise Passengers v. Cunard Line, Ltd.*, No. 86 Civ. 571, 1988 WL 120828, at *3 (D.D.C. Oct. 28, 1988) (certifying for interlocutory appeal based on "inconsistent" decisions by the district court and the Federal Maritime Commission).

2021), *Capriole v. Uber Technologies, Inc.*, No. 20-16030 (9th Cir. argued Oct. 16, 2020), and *Rogers v. Lyft, Inc.*, No. 20-15689 (9th Cir. docketed Apr. 16, 2020).

[6] Further, at least one aspect of the Court's analysis appears to never have been resolved by *any* court. *See, e.g.*, Mem. Op. at 23 n.8 ("One challenging side question that no court seems to have grappled with to date is whether the relevant class of workers is *Lyft* drivers nationwide or rideshare drivers more generally.").

While the Court endorsed what it deemed the "majority" position, Mem. Op. at 17, "a district court's agreement with the weight of authority regarding a particular issue does not mean that there is no 'substantial ground for difference of opinion.'" *Gov't of Guam*, 2019 WL 1003606, at *6; *see In re Vitamins Antitrust Litig.*, 2000 WL 33142129, at *2 ("The mere fact that a substantially greater number of judges have resolved the issue one way rather than another does not, of itself, tend to show that there is no ground for difference of opinion."). And, here in particular, because the procedural posture of this case turns on resolving a threshold issue of jurisdiction, interlocutory review is warranted even if the Court has a "low level of uncertainty" as to the propriety of its ruling. *Gov't of Guam*, 2019 WL 1003606, at *6 (quoting *APCC Servs.*, 297 F. Supp. 2d at 98) (granting interlocutory review of a "significant threshold question" where proceedings "threaten to endure for several years" (quoting *APCC Servs.*, 297 F. Supp. 2d at 98)).

C. An Immediate Appeal May Materially Advance the Termination of This and Similar Litigation.

The third prong is met when an immediate appeal "*may*" materially advance the termination of this litigation, *Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 536 (7th Cir. 2012), which "is closely tied to the . . . controlling question of law" requirement, Wright & Miller, Federal Practice and Procedure § 3930. Section 1292, however, does not require that "a reversal on appeal would actually end the litigation." *Gov't of Guam*, 2019 WL 1003606, at *6 (quoting *Nat'l Veterans Legal Servs. Program v. United States*, 321 F. Supp. 3d 150, 155 (D.D.C. 2018)). It is sufficient that "reversal [of the court's order on appeal] would hasten or at least simplify the litigation in some material way, such as by . . . saving the parties from needless expense." *Id.* at *4 (second alteration added) (quoting *Nat'l Veterans Legal Servs. Program*, 321 F. Supp. at 155).

As discussed, certification here will simplify the case by clarifying whether the litigation will ultimately proceed on an individual or class basis. It also will save both parties from the "needless expense and delay" of arbitration if the D.C. Circuit were to ultimately reverse the Order. *Kuehner*, 84 F.3d at 319. Lyft's arbitration clause requires the use of the American Arbitration Association ("AAA") and its Consumer Arbitration Rules. ECF No. 6-3, at 18. Should those rules apply, parties must pay administrative fees (filing fee, case management fee, and hearing fee), the arbitrator's compensation, and other fees and expenses. Am. Arbitration Ass'n, Consumer Arbitration Rules 33-40 (2020), https://adr.org/sites/default/files/Consumer-Rules-Web.pdf. These expenses can quickly exceed five figures. *See id.* at 33 (noting arbitrator compensation of "$2,500 per day of hearing per arbitrator" (footnote omitted)). This is money (and time) that the parties may not be able to recoup if the D.C. Circuit were to reverse the Order. *See Katz v. Carte Blanche Corp.*, 496 F.2d 747, 754 (3d Cir. 1974) (explaining that § 1292(b) "probably was intended to include orders having . . . potential for harm to the litigant pendente lite or . . . potential for causing a wasted protracted trial if it could early be determined that there might be no liability," and noting that the legislative history included as examples cases "where venue is claimed to have been transferred without proper authority").

The procedural history of *Gardner v. Benefits Communications Corp.*, 175 F.3d 155 (D.C. Cir. 1999), is an additional cautionary tale about the inefficiencies present in arbitrating a case to judgment before appeal. In April 1991, the plaintiff in *Gardner* brought employment discrimination and retaliation claims against her former employer, which moved to arbitrate her claims. *Id.* at 157. The district court granted the employer's motion and denied the plaintiff's subsequent motion for reconsideration or, in the alternative, certification for interlocutory appeal. *Id.* In January 1993, the plaintiff filed her claims in arbitration and received a favorable decision

15 months later. *Id.* She then returned to the district court seeking a new trial and an order that the arbitrators had erred in the amount awarded, but she did not receive a trial court decision until 1998. *Id.* at 158. Only in 1999, eight years after the plaintiff first filed in district court, did the D.C. Circuit weigh in and hold that the plaintiff was "not required to arbitrate her claims in lieu of having the case heard in District Court." *Id.* at 157; *see id.* at 161 ("[W]e note that [the plaintiff] has acted in a timely manner throughout this litigation. She initially requested an interlocutory appeal prior to arbitration, which was denied by the District Court. . . . Because there was no final judgment in this case until March 12, 1998, [the plaintiff] was forced to wait until now to raise her arbitrability and enforcement questions before this court."). The D.C. Circuit then remanded to the district court "for further proceedings to address the merits of [the plaintiff's] claims." *Id.* at 162. Thus, nearly eight years after it was initially filed, the case was set to begin again anew. *Cf.* Fed. R. Civ. P. 1 (procedural rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding").

II. This Order Exemplifies the Type of Issue Requiring Interlocutory Appeal.

While Plaintiffs meet each of the § 1291(b) requirements, this case also presents two additional compelling reasons justifying the Court's exercise of its discretion to allow interlocutory review. *See Gov't of Guam*, 2019 WL 1003606, at *4 (explaining that the court must determine that "a departure from the basic policy of postponing appellate review until after the entry of a final judgment" and that certification is "appropriate as a discretionary matter" (quoting *APCC Servs., Inc.*, 297 F. Supp. 2d at 95)).

First, this appeal presents pure legal questions, which are especially apt for interlocutory review. *See McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004) (describing

cases ideal for § 1292 certification as presenting clear legal issues). This is because discrete legal issues do not require "delv[ing] beyond the surface of the record in order to determine the facts," in contrast to matters that are within the district court's discretion or where the appellate court has no special expertise. *Id.*; *cf. Oscarson v. Office of Senate Sergeant at Arms*, 550 F.3d 1, 4 (D.C. Cir. 2008) (explaining in a sovereign immunity case that "interlocutory appeals are less likely to bring important error-correcting benefits" in a case regarding triable issues of fact "than where purely legal matters are at issue" (quoting *Johnson v. Jones*, 515 U.S. 304, 316 (1995))); *Judicial Watch, Inc.*, 233 F. Supp. 2d at 23 ("[A]llegations of abuse of [trial court] discretion do not . . . raise the types of legal questions for which interlocutory review pursuant to § 1292(b) would be appropriate.").

Second, as a practical matter, § 1292(b) provides the only meaningful avenue for the D.C. Circuit to review these pure legal questions. If the Court does not certify the Order for interlocutory review, Plaintiff's claim will drag on in the morass of arbitration. At best, the claims, and any subsequent appeal, will not be resolved for years. At worst, Plaintiff's circumstances will have changed, an appeal will no longer prove viable, and the issue will escape appellate review.

The importance of expeditiously resolving the appeal of this Order extends beyond the named parties to this action, to potentially thousands of D.C. Lyft drivers in Plaintiff's proposed class also impacted by the policies Plaintiff challenges. Unless Plaintiff is permitted to pursue her paid sick leave claims on their behalf (during a once-in-a-generation pandemic), these Lyft drivers will have little chance of receiving sick pay, and Lyft's alleged misclassification decision will be effectively unreviewable because there will be no way to systemically challenge the policy as illegal. *See* ECF No. 24 (Amicus Curiae Brief of the District of Columbia), at 1

(recognizing that the District of Columbia's workplace rights laws "may be rendered practically unenforceable by courts if District residents are repeatedly swept into mandatory arbitration through the widespread deployment of adhesive contracts"). These are the real-world consequences of Lyft's arbitration policy.

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court certify its March 31, 2021 Order compelling Plaintiff's claims to individual arbitration and staying proceedings pending arbitration for interlocutory review pursuant to § 1292(b).

Dated: May 13, 2021

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