

Nos. 21-0305/0306

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 04, 2022
DEBORAH S. HUNT, Clerk

In re: A&L HOME CARE AND TRAINING)
CENTER, LLC, et al. (No. 21-0305); In re:)
LARRY HOLDER, et al. (No. 21-0306),)
)
Petitioners.)

ORDER

Before: SUTTON, Chief Judge; GRIFFIN and NALBANDIAN, Circuit Judges.

Plaintiffs and Defendants separately petition for permission to appeal the district court’s partial grant of a collective action under the Fair Labor Standards Act. In 21-0305, Defendants ask us to determine what standard to apply when conditionally certifying a collective action. Plaintiffs did not respond, but the United States Chamber of Commerce moves to file an amicus brief in support of the petition. In 21-0306, Plaintiffs ask us to determine: (1) whether the existence of valid arbitration agreements should be considered when conditionally certifying a collective action; and (2) what evidentiary burden applies for purposes of determining the applicable statute of limitations. Defendants respond.

We may, in our discretion, permit an appeal to be taken from an order certified for interlocutory appeal by the district court if: (1) the order involves a controlling question of law; (2) an immediate appeal may materially advance the ultimate conclusion of the litigation; and (3) a substantial difference of opinion exists regarding the correctness of the decision. 28 U.S.C. § 1292(b); *see also In re Trump*, 874 F.3d 948, 951 (6th Cir. 2017) (order). In addition to the statutory factors, prudential factors may also guide our exercise of discretion. *Trump*, 874 F.3d at 952. The district court certified Defendants’ issue and Plaintiffs’ first issue for immediate appeal.

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We agree, for the reasons stated by the district court, that the statutory factors support review of these issues. *See Holder v. A&L Home Care & Training Ctr., LLC*, No. 1:20-CV-757, 2021 WL 3400654, at *9-12 (S.D. Ohio Aug. 4, 2021). Plaintiffs also seek review of the district court's determination that the applicable statute of limitations was two years, not three years. "[S]ection 1292(b) authorizes certification of *orders* for interlocutory appeal, not certification of *questions*." *Trump*, 874 F.3d at 951 n.3 (quoting *Linton v. Shell Oil Co.*, 563 F.3d 556, 557 (5th Cir. 2009) (per curiam)). Thus, regardless of whether this issue fits within the prerequisites for obtaining certification, Plaintiffs may raise it in their appeal.

The petitions for permission to appeal and the motion for leave to file an amicus brief in support of Defendants' petition are **GRANTED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk