No. 20-1077

IN THE

Supreme Court of the United States

AMAZON.COM, INC. and
AMAZON LOGISTICS, INC.,

Petitioners,

v.

BERNARD WAITHAKA,

Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether package-delivery drivers who use their personal vehicles to make purely intrastate deliveries are "engaged in foreign or interstate commerce" so that their claims are exempt from arbitration under § 1 of the Federal Arbitration Act.

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INTERESTS OF *AMICI CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It appears often as *amicus* in important Federal Arbitration Act (FAA) cases. *See, e.g.*, *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015). And WLF has published many papers by outside experts on arbitration. *See, e.g.*, Victor E. Schwartz & Christopher E. Appel, *Setting the Record Straight About the Benefits of Pre-Dispute Arbitration*, WLF Legal Backgrounder, www.bit.ly/2Z6rKqg (June 7, 2019).

Allied Educational Foundation is a nonprofit charitable and educational foundation based in Tenafly, New Jersey. Founded in 1964, AEF promotes education in diverse areas of study, including law and public policy. It has appeared as *amicus* many times in this Court.

The FAA "establishes a federal policy favoring arbitration." *Shearson/Am. Exp. Inc. v. McMahon*, 482 U.S. 220, 226 (1987). It requires, in § 2, that most people comply with their arbitration agreements. The FAA contains a discrete exemption, in § 1, for a few categories of transportation workers.

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[*] No party's counsel authored any part of this brief. No person or entity, other than *amici* and their counsel, helped pay for the brief's preparation or submission. After timely notice, all parties consented to the filing of this brief.

Congress included the exemption not to excuse these classes of workers from arbitration, but merely to enable them to arbitrate through other congressionally created channels. The respondent here is not subject to an alternative channel of this sort; he just wants to get out of arbitration altogether. He seeks to gut the federal policy in favor of arbitration by expanding the § 1 exemption far beyond its proper bounds.

The First Circuit rewarded the respondent's efforts. *Amici* urge this Court to intervene and set things right.

STATEMENT OF THE CASE

Sometimes called "the everything store," Amazon sells a vast array of goods through its website, www.amazon.com. It crowdsources delivery of some of these goods through its Amazon Flex smartphone app. Using this app, an independent contractor can agree to pick up and deliver items locally for Amazon. The independent contractor uses her own mode of transportation, sets her own schedule, and decides which packages to deliver. Each person who partakes in Amazon Flex signs an Independent Contractor Terms of Service that contains an arbitration clause.

The respondent made local deliveries through Amazon Flex. He sued Amazon under Massachusetts's wage and independent-contractor laws. Amazon moved to compel arbitration, arguing that the respondent must honor the arbitration clause in the Independent Contractor Terms of Service.

Amazon invoked § 2 of the FAA, which says that an otherwise valid arbitration clause in a "contract evidencing a transaction involving commerce" is "enforceable." 9 U.S.C. § 2. In response, the respondent invoked § 1, known as the "transportation-worker exemption." It says that the FAA does not govern "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." *Id.* § 1. The respondent argued that he falls within the § 1 exemption.

The district court accepted the respondent's argument and denied Amazon's motion to compel arbitration. (Pet. App. 65a, 83a.) In its view, the respondent falls within the § 1 exemption because "crossing state lines is not necessary" to trigger the exemption. (*Id.* at 63a.) So long as he "handles goods that travel interstate," the court reasoned, the respondent is covered by § 1. (*Id.*)

The First Circuit affirmed. (Pet. App. 3a.) Rather than focusing on the respondent's exclusively intrastate activities (i.e., those activities in which the "worker" was "engaged"), the appeals court focused on the goods being moved. Drawing from ill-fitting case law interpreting the Federal Employers' Liability Act, ch. 149, 35 Stat. 65 (1908), the court decided that "moving goods or people destined for, or coming from, other states" is what matters. (*Id.* at 23a.) According to the First Circuit, the § 1 exemption "encompasses the contracts of transportation workers who transport goods or people within the flow of interstate commerce, not simply those who physically cross state lines in the course of their work." (*Id.* at 2a-3a.)

SUMMARY OF ARGUMENT

Litigation is expensive. It's expensive for businesses, which must pay lawyers to argue and employees to miss work to testify. It's expensive for consumers and workers, who cover businesses' costs through higher prices and lower wages. It's expensive for the judiciary, which must pay for "judges, attendants, light, heat, and power—and even ventilation in some courthouses." Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees on the Judiciary, 68th Cong., 1st Sess. (1924) (statement of Charles L. Bernheimer). And it's expensive for the average citizen; for just as corporate litigation expenses are really consumer and worker expenses, the judiciary's expenses are really taxpayer expenses.

It's no mystery, then, why Congress passed the FAA. Courts had long refused to enforce most arbitration agreements, and this meant that more disputes remained in litigation. To save people time, money, and trouble, Congress empowered courts to enforce otherwise valid clauses, in contracts "involving commerce," that require streamlined private dispute resolution—arbitration. 9 U.S.C. § 2. But the FAA contains a qualification. It does not govern "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

Contrary to the First Circuit's expansive reading, § 1 is not the product of Congress's desire to excuse transportation workers—and, for some peculiar reason, them alone—from honoring arbitration agreements. Rather, § 1 exists because

Congress expected certain classes of transportation workers to engage in arbitration governed by *other* federal laws. When Congress enacted the FAA, seamen and railroad workers were subject to their own federal arbitration regimes. Congress exempted these classes of workers from the FAA to ensure that the FAA did not disrupt those distinct systems of alternative-dispute-resolution. (The seamen had, in fact, lobbied for this carve out.)

As for § 1's residual clause—the carveout for "other class[es] of workers engaged in foreign or interstate commerce"—it covers only those workers whom Congress expected would get their own federal arbitration law. This means workers *precisely analogous* to seamen and railroad employees. It means workers who (1) traverse national and international shipping lanes and (2) might reasonably be expected to cause major economic disruption through labor action. It means, in short, workers who regularly carry goods, in bulk, across interstate or foreign borders.

Section 1 simply accommodates existing or expected federal arbitration laws tailored to specific classes of workers in the transportation sector. And because § 1 fulfills this singular purpose, there is no principled way to stretch its application. Although some judge-made tests, including the First Circuit's, purport to expand the exemption beyond those engaged in the interstate and international transportation of goods, these contrived standards defy statutory text and context, produce inconsistent results, and serve no end set forth by Congress.

To prevent this misguided view from metastasizing any further, this Court should grant review and clarify the scope of the § 1 exemption. The question presented is vital to so many businesses and workers who, relying on the FAA, have agreed to arbitrate their disputes.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS NEEDED TO CONFIRM THAT ONLY CLASSES OF WORKERS WHO TRANSPORT GOODS IN BULK ACROSS BORDERS ARE COVERED BY FAA § 1.

Section 2 of the FAA empowers a party to enforce an (otherwise valid) arbitration clause in "a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. Congress enacted a statute to thwart the "great variety" of "devices and formulas" that judges "hostil[e] towards arbitration" had used to "declar[e] arbitration against public policy." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 342 (2011). And it used broad terms ("evidencing" a transaction "involving" commerce) because it wanted the FAA to extend as far as the federal legislative power under the Commerce Clause can go. *Allied-Bruce Terminix Companies v. Dobson*, 513 U.S. 265, 277 (1995). In short, Congress wanted the FAA to govern most arbitration clauses.

Most, but not all. Section 1 of the FAA withdraws from the statute's coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. As shown below,

that exemption cuts much more narrowly than the respondent and the First Circuit contend.

First, Congress framed § 2 more broadly than § 1. Section 2 extends the FAA to a contract "involving" commerce, while § 1 removes it from a contract of employment signed by certain classes of workers "engaged in" foreign or interstate commerce. The "open-ended" § 2 is limited by the "narrower" § 1. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001). This manifests an intent to withdraw only a small sliver of contracts from the FAA's purview. After all, if Congress had wanted the FAA to have a narrow ambit—if it had wanted it to apply, say, only to contracts between merchants—it could have simply said so in the first place. It would have made no sense for Congress to craft a narrow statute by the circuitous method of (1) writing a sweeping clause, and then (2) cutting that clause to the bone with another, almost equally sweeping clause.

What's more, under the venerable statutory canon *noscitur a sociis*, "a word is known by the company it keeps." *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961). Section 1 lists *seamen*, *railroad employees*, and *others* "engaged in" foreign or interstate commerce. The section's more general category ("any other class of workers engaged in foreign or interstate commerce") is "controlled and defined" by the examples that precede it ("seamen" and "railroad employees"). *Circuit City*, 532 U.S. at 114-15. So § 1 governs seamen, railroad employees, and *others like them*. Others, that is, who engage in bulk foreign or interstate shipping like seamen and railroad employees do. Section 1 is a discrete

carveout for a discrete class of transportation workers.

But why would Congress want to protect commercial arbitration to the fullest extent possible, *except* when it comes to nationwide transportation, the very lifeblood of commerce? The answer is revealed by a closer look at Congress's decision to single out rails and sails. Why were railroad employees and seamen singled out? Special reasons applied to each group—reasons that point to § 1's exceedingly limited role in Congress's arbitration scheme.

Start with the railroads. "Before the modern highway system, railroads were the only practical means of long-distance transportation." Dennis R. Nolan & Roger I. Abrams, *American Labor Arbitration: The Early Years*, 35 U. Fla. L. Rev. 337, 382 (1983). And "railroad employees were among the first to organize nationally." *Id.* The railroads were thus both a keystone of the economy and a hotbed of labor friction. No surprise, then, that the national government spotted the need for streamlined dispute resolution for the rail industry long before it spotted the need for it in the wider market. "Reacting to a drastic increase in [railroad worker] strikes, President Grover Cleveland recommended to Congress in 1886 the creation of a permanent board for voluntary arbitration of railroad labor disputes." *Id.* at 382.

The resulting law—and a series of others—failed to stem the strikes. *Id.* at 382-85. But Congress kept trying. For decades—up to and through 1925, the year the FAA was passed—

Congress collaborated with the railroads and their workers to create a special rail-industry arbitration regime. Around the very time Congress was considering the FAA, in fact, "railway executives and union officials" were holding "a series of conferences aimed at drafting a new law." *Id.* at 386. This resulted in the Railway Labor Act of 1926—a law that stuck. It created a comprehensive process for resolving railroad labor grievances. *Id.* at 386-87. The law even banned strikes "over certain grievance disputes." *Id.* at 387. It would, of course, have made no sense for Congress to disrupt the delicate negotiations underlying this law by slapping the FAA on the railroads.

The reason seamen are mentioned in § 1 is more obvious still. From the beginning of the republic, the federal government had taken a keen interest in maritime working conditions. For instance, the First Congress "enacted protective legislation giving seamen the right to written employment contracts * * * [and] protection from onboard debt collection." Ahmed A. White, *Mutiny, Shipboard Strikes, and the Supreme Court's Subversion of New Deal Labor Law*, 25 Berkeley J. Emp. & Lab. L. 275, 292 (2004) (discussing Act of July 20, 1790, 1 Stat. 131, 131-35); *see also Southern S.S. Co. v. NLRB*, 316 U.S. 31, 38-39 (1942) ("Workers at sea have been the beneficiaries of extraordinary legislative solicitude[.] * * * The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages, and return transportation to this country if destitute abroad.").

The First Congress also regulated the earliest form of maritime alternative-dispute-resolution—better known as mutiny—through its power "to define and punish * * * Felonies committed on the high Seas." U.S. Const. art. I § 8, cl. 10. "If any seaman shall * * * make a revolt in the ship," declared the Crimes Act of 1790, he "shall be deemed * * * a pirate and a felon, and * * * shall suffer death." 1 Stat. 112, 114. Despite this and other punitive laws, robust "labor protest" was "a common feature of shipboard life in the nineteenth and early twentieth centuries." White, *supra*, at 299-301. By 1925, therefore, seamen (like railroad workers) were both highly organized and the subject of several federal labor laws. *See id.* at 305. As far back as 1872, in fact, Congress had provided seamen a distinct form of arbitration, overseen by "shipping commissioners," in many ports. *See* Shipping Commissioners Act of 1872, 17 Stat. 262, 267 (Sec. 25).

Nor is that all. The president of the International Seamen's Union lobbied to exempt seamen from the FAA. Matthew W. Finkin, *Workers' Contracts under the United States Arbitration Act: An Essay in Historical Clarification*, 17 Berkeley J. Emp. & Lab. L. 282, 284-85 (1996). He feared that, given then-existing quirks of admiralty law, seamen were especially vulnerable to hidden arbitration clauses. *Id.* at 286. He feared too that, unlike other workers, seamen (and railway laborers) were subject, if they ignored such a clause, to being "forcibly returned to work." *Id.* at 287. And he believed that the courts, which had historically viewed seamen as "wards of the admiralty," treated his constituents with special favor. *Id.* at 287-88.

The seamen's exemption from the FAA thus has all the marks of a legislative compromise extracted by an interest group—and limited to that group's unique circumstances.

It is true that, in a letter to Congress supporting passage of the FAA, then-Secretary of Commerce Herbert Hoover wrote: "If objection appears to the inclusion of workers' contracts in the law's scheme, it might be well amended by stating 'but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in interstate or foreign commerce.'" Joint Hearings on S. 1005 and H. R. 646, *supra*. But the context discussed above confirms that Hoover, in referring to "workers' contracts," was most likely just responding to the special needs of a few discrete transportation industries (and the special lobbying of the seamen in particular).

So the keys to understanding § 1 of the FAA are (1) the unique situation of (and lobbying by) seamen and (2) "the existence of administrative rather than judicial machinery for settlement of labor disputes" involving seamen and railroad workers. *Amalgamated Ass'n St. Elec. Ry. & Motor Coach Emp. of Am. v. Penn. Greyhound Lines, Inc.*, 192 F.2d 310, 313 (3d Cir. 1951). Congress understood, above all, that including sea and rail workers in the FAA "would have created pointless friction" and "wasteful duplication" in "already sensitive area[s]." *Id.* Once these driving forces are accounted for, the scope of § 1 becomes clear. It was meant to apply, at most, to workers in cross-border bulk shipping industries subject, or likely to become

subject (hence the "other class of workers" residual clause), to their own unique federal arbitration schemes.

And this is essentially how most federal courts have come to understand § 1. The exemption applies, in these courts' view, to workers "actually engaged in the movement of goods in interstate commerce." *Rojas v. TK Commc'ns, Inc.*, 87 F.3d 745, 748 (5th Cir. 1996); *see also, e.g.*, *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1470-72 (D.C. Cir. 1997) (collecting cases); *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 598-601 (6th Cir. 1995) (collecting yet other cases).

Given the context discussed above—context confirmed by an early authority on this topic, *Tenney Engineering, Inc. v. United Electrical Radio & Machine Workers*, 207 F.2d 450, 452-53 (3d Cir. 1953)—it's clear that "workers engaged in the physical movement of goods" does not mean workers "engaged" in such "movement" in some loose chain-of-causation sense. It means, rather, workers "engaged directly" (*id.* at 452) in such movement—workers whose primary role is literally to carry goods, in bulk, across state lines or foreign boundaries. *See, e.g.*, *Asplundh*, 71 F.3d at 600-01 (holding that § 1 governs "seamen, railroad workers, and any other class of workers *actually* engaged in the *movement of goods* in interstate commerce in *the same way* that seamen and railroad workers are") (emphasis added). At most § 1 might stretch, some of these courts conclude, to "work so closely related" to such shipping "as to be in practical effect part of it," *Tenney*, 207 F.2d at 452—a problematic construction addressed separately below.

A "narrow construction" of "the § 1 exclusion" has prevailed before this Court, too, in *Circuit City*, 532 U.S. at 119. The Court noted the distinction between § 2's use of the broad "involving commerce" and § 1's use of the narrower "engaged in commerce," *id.* at 118; and it stressed the importance of reading "other class of workers" in line with "seamen" and "railroad employees," *id.* at 114-15. It also endorsed the view that Congress's decision "to exempt [from the FAA] the workers over whom the commerce power [i]s most apparent" arose from the special status of those workers' industries. *Id.* at 120. "It is reasonable to assume," *Circuit City* explained, "that Congress excluded 'seamen' and 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Id.* at 121. The "other class of workers" clause, under this reading, covers only those "transportation workers" who, being themselves engaged in the "free flow of goods" across borders, might, like seamen and railroad employees, get a federal arbitration law of their own. *Id.*

The question in *Circuit City* was whether "all employment contracts are excluded from the FAA" by § 1. *Id.* at 110-11. In answering "no," the Court needed merely to declare that § 1 "exempts from the FAA only contracts of employment of transportation workers." *Id.* at 119. The Court had no need to take the next step and clarify *which* transportation workers—that question is squarely presented here. But the import of *Circuit City*'s statutory analysis is unmistakable: § 1 should apply to only those workers who transport goods in bulk across national or international borders, as seamen and railroad

employees do. Those are the only kinds of workers who might generate the type of labor issues that would spur Congress to pass "specific [arbitration] legislation" (*id.* at 121), as it did for the seamen and the railroad employees.

Hill v. Rent-A-Center, Inc., 398 F.3d 1286 (11th Cir. 2005), reads *Circuit City* accurately. Hill was an account manager for a furniture rental company. *Id.* at 1288. As part of his job, he sometimes delivered "goods to customers out of state in his employer's truck." *Id.* He argued that § 1 exempted him from arbitration with his employer. After discussing *Circuit City*, however, *Hill* holds that § 1 does not cover workers who "incidentally transported goods interstate as part of their job in an industry that would otherwise be unregulated"—an industry, that is, for which Congress would not create "specific legislation." *Id.* at 1289. "There is no indication," *Hill* continues,

> that Congress would be any more concerned about the regulation of the interstate transportation activity incidental to Hill's employment as an account manager, than it would in regulating interstate 'transportation' activities of an interstate traveling pharmaceutical salesmen who incidentally delivered products in his travels, or a pizza delivery person who delivered pizza across a state line to a customer in a neighboring town.

Id. at 1289-90. Exactly so.

In sum, the crucial factor driving the creation of § 1 (other than straight special-interest lobbying for seamen) was whether a distinct federal scheme of arbitration existed, or was likely to arise, for a given class of state- or foreign-boundary-crossing transportation workers. Properly read, § 1 does not cover workers who engage in local delivery or even in incidental boundary crossings. It governs only seamen, railroad employees, and others whose primary job is to transport goods in bulk across state or foreign borders.

II. REVIEW IS NEEDED BECAUSE THERE IS NO PRINCIPLED WAY TO APPLY FAA § 1 TO THOSE WHO DO NOT TRANSPORT GOODS IN BULK ACROSS BORDERS.

What the statutory text and context establish, logic confirms. There is no principled way to stretch § 1 beyond seamen, railroad employees, and other workers who transport goods in bulk across borders. To prevent Congress's broad policy favoring arbitration from unravelling one lawsuit at a time, this Court should grant review.

"Judicial action must be governed by *standard*, by *rule*, and [it] must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). Yet by what "standard" or "rule" is a judge to decide which workers not literally engaged in cross-border shipping are to fall within the § 1 exemption? Is it enough to merely work for a *business* whose products are part of the flow of commerce? *Rittmann v. Amazon.com*, 971 F.3d 904, 917 (9th Cir. 2020). Is it

enough to work *closely* with shippers while not transporting goods oneself? *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593 (3d Cir. 2004); *cf. Tenney*, 207 F.2d at 452. Is it enough to *sometimes* transport goods across state lines? *Hill*, 398 F.3d at 1288-90. How close is close enough? How often is often enough? And above all: Why? No "principled, rational" basis can be "found in the * * * law[]" for any of these tests. *Rucho*, 139 S. Ct. at 2507. Each is unmoored from the statute itself.

The apotheosis of this approach appears in *Lenz v. Yellow Transportation, Inc.*, 431 F.3d 348 (8th Cir. 2005)—a case recently relied on by the Ninth Circuit panel majority in *Rittmann*, 971 F.3d at 911. *Lenz* puts forth eight "non-exclusive" factors for "determining whether an employee is so closely related to interstate commerce that he or she fits within the § 1 exemption," *Lenz*, 431 F.3d at 352. These factors include whether "the employee handles goods that travel interstate" and whether a "nexus * * * exists between the employee's job duties and the vehicle the employee uses in carrying out his duties." *Id.* Only one and a half of the *Lenz* factors are rooted in § 1. The full-credit factor is whether an employee "is within a class of employees for which special arbitration already existed when Congress enacted the FAA." *Id.* The half-credit factor is "whether a strike by the employee would disrupt interstate commerce," *id.*—full credit being achieved if one adds: "in a fashion that would likely spur Congress to pass a unique alternative-dispute-resolution mechanism for that employee and his peers."

"When an appellate judge says that the * * * issue must be decided * * * by a balancing of all the factors involved, he begins to resemble a finder of fact more than a determiner of law." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1182 (1989). Because "each judge" will "use[] his favorite factors in every case," there will "be no common ground." *United States v. Pinto*, 875 F.2d 143, 145 (7th Cir. 1989). Judges inevitably will apply disparate policies and reach inconsistent results. A basic aspect of justice is the like treatment of like cases. "And the trouble with the discretion-conferring approach to judicial law making is that it does not satisfy this sense of justice very well." Scalia, *supra*, at 1178. Although "we will have * * * balancing modes of analysis with us forever," those modes should "be avoided where possible." *Id.* at 1187. By introducing a balancing test where none is needed, *Lenz* sows confusion where there can, and should, be clarity.

True enough, many "distinctions of the law are distinctions of degree," *Panhandle Oil Co. v. Miss. ex rel. Knox*, 277 U.S. 218, 223 (1928) (Holmes, J., dissenting), and "courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them," *Olmstead v. United States*, 277 U.S. 438, 469 (1928) (Holmes, J., dissenting). But this is not such a case. It is not as if "we must consider * * * two objects of desire both of which we cannot have and make up our minds which to choose." *Id.* The Court is not "free to choose between two principles of policy," *id.*, because § 1 contains no such *dueling* policies. There is only, on the one hand, a law that "seeks broadly to overcome judicial hostility to arbitration agreements," *Circuit*

City, 532 U.S. at 118, and, on the other, a narrow exemption for "the workers over whom the commerce power [i]s most apparent"; an exemption that can be explained only as a carveout for discrete sectors with "established or developing statutory dispute resolution schemes covering specific workers," *id.* at 120-21. Expanding § 1 beyond those "specific workers"—beyond seamen, railroad workers, and other border-hopping transporters—"would not answer to any concern expressed to or by Congress in the debates leading up to the passage of the [FAA]." *Pryner v. Tractor Supply Co.*, 109 F.3d 354, 358 (7th Cir. 1997).

This Court should not permit the lower courts to engage in a flight of logical fancy to extend § 1; it should, if anything, intervene and deploy some common sense to constrain it. *Yates v. United States*, 574 U.S. 528 (2015), offers an exemplary model. "To prevent federal authorities from confirming that he had harvested undersized fish" in federal waters, Yates "ordered a crew member to toss the suspect catch into the sea." *Id.* at 531. Yates was convicted of knowingly destroying a "tangible object" in violation of 18 U.S.C. § 1519. "A fish," a plurality of the Court wrote, "is no doubt an object that is tangible" *Id.* at 532. Case closed? No, the plurality said, because § 1519 "was enacted as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745, legislation designed to protect investors and restore trust in financial markets following the collapse of Enron Corporation." *Id.* To count the tangible object "fish" as a "tangible object" under § 1519 "would cut § 1519 loose from its financial-fraud mooring." *Id.* "Mindful that in Sarbanes-Oxley, Congress trained its attention on corporate and accounting deception and

cover-ups," the plurality construed "tangible object" to include only items that can be "used to record or preserve information." *Id.*

Mindful that in § 1 Congress fixed its attention on discrete classes of transportation workers with their own distinct federal arbitration schemes, this Court should grant review and construe "any other class of workers engaged in foreign or interstate commerce" to include only those who regularly transport goods in bulk across state or national borders.

* * *

In sum, not even a worker who makes occasional deliveries across state lines falls within § 1, properly understood. *Hill*, 398 F.3d at 1288-90. Surely the respondent, who made only local, purely intrastate deliveries, likewise falls well outside the exemption. Like most other workers, he must honor his arbitration agreement under the FAA. But not every court of appeals embraces this commonsense construction. To clear up this state of confusion, this Court's intervention is sorely needed.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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