No. 21-309

In the Supreme Court of the United States

SOUTHWEST AIRLINES CO., PETITIONER

v.

LATRICE SAXON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

Melissa A. Siebert
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Dr., Ste. 4700
Chicago, IL 60606

Scott A. Chesin
SHOOK, HARDY & BACON L.L.P.
New York, NY 10019

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
Kyser Blakely*
Hanaa Khan
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Ave.
Los Angeles, CA 90071

**Admitted in Ohio and California; supervised by DC Bar members while DC application is pending*

Counsel for Petitioner

QUESTION PRESENTED

Whether the Federal Arbitration Act's "transportation worker" exemption—for "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," 9 U.S.C. § 1—covers supervisors of airplane baggage loaders even though neither the supervisors nor the baggage loaders actually transport anything, much less in foreign or interstate commerce.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Southwest Airlines Co., a publicly held corporation with no parent corporation. PRIMECAP Management Company and Vanguard Group Inc. have each filed a Form 13G with the Securities and Exchange Commission stating that each beneficially owns 10% or more of the shares of Southwest Airlines Co. No other entity has reported holdings of more than 10% of Southwest Airlines Co.

Respondent is Latrice Saxon.

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

OTHER AUTHORITIES

INTRODUCTION

In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Court held that only certain transportation workers are exempt from the Federal Arbitration Act (FAA) under 9 U.S.C. § 1. This case asks *what kind* of transportation workers qualify for the § 1 exemption. The answer lies in the FAA's structure and "very particular" language. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019). The plain meaning of the § 1 exemption, consistent with the FAA's proarbitration purposes, reaches only classes of workers that participate directly in the cross-border transportation of goods or people. That means actually moving goods or people through the channels of foreign or interstate commerce.

As *Circuit City* makes clear, statutory structure matters. Section 2, the heart of the FAA, compels courts to enforce all arbitration agreements "involving commerce." 9 U.S.C. § 2. That "expansive" language reaches "to the full extent of [Congress'] commerce power." *Circuit City*, 532 U.S. at 113-14. Section 1, in contrast, slices a "narrow" exception from § 2's broad coverage. *Id.* at 118. It provides that the FAA "shall [not] apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

This structure is intentional. For all workers, Congress wanted to end judicial hostility to arbitration agreements, place those agreements on equal footing with other contracts, and promote arbitration over litigation. And for a narrow category of certain transportation workers, Congress likely wanted not to deter arbitration, but simply to apply specific dispute-resolution rules under other federal statutes.

As that context confirms, § 1 has a narrow reach. It says transportation workers must be "engaged in foreign or interstate commerce." *Id.* When Congress enacted the FAA in 1925, that phrase meant (as it does today) "direct participation in … the interstate flow of goods or services." *United States v. American Bldg. Maint. Indus.*, 422 U.S. 271, 283-84 (1975). In the transportation context, the phrase thus means direct participation in the transportation of goods or people through the channels of commerce. Having a mere "connection" to such transportation, however close, is not enough. *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 198 (1974). After all, such a "nexus" standard "has no logical endpoint," *id.*, and the FAA does not tolerate "complexity and uncertainty," *Circuit City*, 532 U.S. at 123.

Section 1 contains another textual clue: exempt workers must be "engaged in foreign or interstate commerce" in the same way that "seamen" and "railroad employees" are. Those enumerated workers served on instrumentalities of commerce and passed through foreign and interstate channels, most of the time across national or state borders. For example, when Congress passed the FAA, seamen excluded stevedores, land-based workers who loaded and unloaded vessels but *transported* nothing. That distinction mirrors the "direct participation" requirement and shows why the "connection" standard fails.

"[T]he FAA's proarbitration purposes" confirm the plain meaning of § 1's text. *Circuit City*, 532 U.S. at 123. Given the broad scope of § 2, it would be nonsensical to ascribe to Congress an intention "to undo" that very coverage, especially when § 1 uses terms with "limited reach." *Id.* at 115, 122.

Neither Saxon nor the ramp agents she supervises participate directly in transporting goods in foreign or interstate commerce. She must arbitrate her claim.

OPINIONS BELOW

The Seventh Circuit's opinion (Pet. App. 1a-21a) is reported at 993 F.3d 492. The district court's order (Pet. App. 22a-43a) is unreported but available at 2019 WL 4958247.

JURISDICTION

The Seventh Circuit entered judgment on March 31, 2021. Southwest timely filed its petition for a writ of certiorari on August 27, 2021, and the Court granted review on December 10, 2021. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1 of the FAA, 9 U.S.C. § 1, provides:

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of

> employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Section 2 of the FAA, 9 U.S.C. § 2, provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT

A. Legal background

1. The FAA promotes arbitration over litigation by instructing courts to honor arbitration agreements just like other contracts. *Circuit City*, 532 U.S. at 123; *see* 9 U.S.C. § 2. Before the FAA, courts were hostile to arbitration agreements, refusing to enforce them despite their contractual nature. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995); *Circuit City*, 532 U.S. at 111. The FAA ended that practice. It put "arbitration agreements on an equal footing with other contracts," "requir[ing] courts to enforce them according to their terms." *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). Now, courts must hold parties that agree to arbitrate to their word. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018). The FAA thus reflects Congress' decision to promote arbitration given its substantial benefits: "lower costs,

greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011) (citation omitted).

The FAA's coverage is sweeping. Indeed, it is an "exercise [of] Congress' commerce power to the full." *Allied-Bruce*, 513 U.S. at 277. Section 2 provides that every arbitration agreement set forth in a "maritime transaction or a contract evidencing a transaction involving commerce … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. That expansive wording "compels judicial enforcement of a wide range of written arbitration agreements," including those found in employment contracts. *Circuit City*, 532 U.S. at 111, 113-14.

Section 1 slices a narrow exception. It states that the FAA "shall [not] apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. That language first identifies "seamen" and "railroad employees," and then adds a general phrase, "any other class of workers engaged in foreign or interstate commerce." *Id.* This general phrase is often called the residual clause. *See Circuit City*, 532 U.S. at 114-15.

2. The Court has interpreted § 1 in two cases. *Circuit City* held that the § 1 exemption covers "only contracts of employment of transportation workers." *Id.* at 119. Unlike § 2, which extends broadly to all contracts "involving commerce," the Court reasoned, § 1 narrowly covers only workers "engaged in commerce"—a term of art with "limited reach." *Id.* at 115-16. The *ejusdem generis* canon also supported "a

narrow construction." *Id.* at 118. Because § 1 specifically identifies "seamen" and "railroad employees," the residual clause must be interpreted narrowly to reach only similar kinds of workers—*i.e.*, transportation workers. *Id.* at 114-15.

The FAA's purpose confirmed the Court's narrow reading. Although the phrase "engaged in commerce" may not "necessarily have a uniform meaning whenever used by Congress," *id.* at 118 (citation omitted), the statute's driving proarbitration purposes provided "no reason" to adopt "an expansive construction … go[ing] beyond the meaning of the words Congress used." *Id.* at 119. To the contrary, construing the residual clause broadly would introduce "considerable complexity and uncertainty … into the enforceability of arbitration agreements." *Id.* at 123. Arbitration benefits everyone, including the overloaded judiciary, the Court stressed, and it "may be of particular importance in employment litigation." *Id.* Construing § 1 broadly would "undermin[e] the FAA's proarbitration purposes and 'breed[] litigation from a statute that seeks to avoid it.'" *Id.* (quoting *Allied-Bruce*, 513 U.S. at 275).

Finally, the Court rejected an argument that Congress had acted irrationally by enacting a narrow exemption. The Court inferred that Congress might have wished not "to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Id.* at 121. For example, federal laws enacted before the FAA provided specific arbitration rules for seamen and railroad employees, and Congress wanted to ensure that those provisions would apply. *Id.*

The Court next addressed the § 1 exemption in *New Prime*, holding that "contracts of employment" means all "agreements to perform work," including contracts with independent contractors. 139 S. Ct. at 543-44. Because "contracts of employment" was not "a term of art bearing some specialized meaning" in 1925, the Court looked to common usage, statutes, and decisions to construe the phrase. *Id.* at 539-40. Those authorities proved that § 1 covers "work agreements involving independent contractors." *Id.* at 540. They also confirmed that "seamen" and "railroad employees" likely included independent contractors too. *Id.* at 542-43. Given the plain meaning of "contracts of employment," the Court had no reason to consider the "liberal federal policy favoring arbitration agreements." *See id.* at 543 (citation omitted).

Like *Circuit City*, *New Prime* commented on what "seem[ed]" to be Congress' goal in enacting § 1's "very particular qualification." *Id.* at 537. The point was not to exempt all transportation workers from arbitration. Instead, Congress might have wanted to favor the "alternative employment dispute resolution regimes" it had created for certain transportation workers over "whatever arbitration procedures the parties' private contracts might happen to contemplate." *Id.*

B. Factual background

This case arises from Respondent Latrice Saxon's work as a ramp-agent supervisor for Southwest. Pet. App. 2a. Saxon supervised, trained, and assisted ramp agents—workers who load and unload passenger luggage onto and off of planes. Pet. App. 3a. Although Saxon occasionally assisted ramp agents in the loading and unloading process, neither she nor the ramp agents transported any cargo. Pet. App. 36a.

Moreover, both ramp-agent supervisors and ramp agents work only at the airport where they are based. *See* Pet. App. 9a-10a, 23a-25a. Saxon worked solely at Chicago Midway International Airport. Pet. App. 3a.

Southwest's ramp agents are unionized and their employment is governed by a collective-bargaining agreement (CBA). *Id.* They therefore are subject to "mandatory" arbitration of certain disputes under the Railway Labor Act (RLA). *Hawaiian Airlines, Inc. v. Norris,* 512 U.S. 246, 248 (1994) (citation omitted); *see also* 45 U.S.C. §§ 151-165, 181-188. Southwest's ramp-agent supervisors, in contrast, are not unionized and so are not covered by a CBA. Pet. App. 3a. Instead, like her fellow ramp-agent supervisors, Saxon signed an employment contract that includes an agreement to individually arbitrate wage disputes. *Id.*

C. Procedural background

1. Despite her agreement to arbitrate, Saxon brought a putative collective action against Southwest in federal district court, seeking overtime pay under the Fair Labor Standards Act for herself and a nationwide group of ramp-agent supervisors. Pet. App. 3a. Southwest sought to enforce the arbitration agreement. *Id.* Saxon conceded that her contract fell within the scope of § 2. *See* Pet. App. 26a. But she argued that § 1 exempted her because ramp-agent supervisors are a "class of workers engaged in foreign or interstate commerce." Pet. App. 3a.

2. The district court ruled that Saxon's dispute "must be arbitrated" because § 1 does not cover ramp-agent supervisors. Pet. App. 42a. The court reasoned that "the linchpin for classification as a 'transportation worker' under *Circuit City* is actual transportation, not merely handling goods." Pet. App.

37a. Saxon thus needed to belong to a class of workers that does more than "merely handle" goods or people "at one end" of the interstate journey. Pet. App. 37a-38a. Saxon failed that test, because her "job duties at most include[d] loading and unloading some cargo from [Southwest's] planes, along with supervising that task." *Id.* She did "not transport cargo at all (even intrastate)." Pet. App. 39a.

3. a. The Seventh Circuit reversed. The court held that cargo loaders are "engaged in commerce for purposes of § 1," Pet. App. 12a, because they are "so closely related to interstate transportation as to be practically a part of it," Pet. App. 10a (citation omitted). Although the court acknowledged that loading cargo is not the same as transporting it in foreign or interstate commerce, it thought that such "closely related work *is* interstate transportation." Pet. App. 19a. Thus, in the court's view, workers who do not actually transport goods or people and who do not cross national or state borders (like Saxon) can still qualify as "transportation workers" exempt from arbitration under the FAA. Pet. App. 10a.

b. Until this case, the Seventh Circuit required "transportation workers" to "be connected not simply to the goods, but to the act of moving those goods across state or national borders." *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.). Then-Judge Barrett underscored that "the inquiry is always focused on the worker's active engagement in the enterprise of moving goods across interstate lines," as "*Circuit City* demands." *Id.* Without that transportation requirement, she explained, the statute "would sweep in numerous categories of workers whose occupations have nothing to do with interstate transport—for example, dry cleaners who

deliver pressed shirts manufactured in Taiwan and ice cream truck drivers selling treats made with milk from an out-of-state dairy." *Id.* *Circuit City* forecloses that result, then-Judge Barrett stressed, by requiring "a narrow construction" limiting the residual clause's scope to the kind of "work done by seamen and railroad workers." *Id.* (citing *Circuit City*, 532 U.S. at 106, 118).

By departing from those principles here, the Seventh Circuit split from other circuits. No other court of appeals has held that workers who merely load goods onto instrumentalities of foreign or interstate commerce are "transportation workers" exempt from arbitration under the FAA.

Drawing a clear and administrable line, the Fifth and Eleventh Circuits both hold that "transportation workers" include only those who actually transport goods or passengers across national or state borders. *See Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1344-51 (11th Cir. 2021); *Eastus v. ISS Facility Servs., Inc.*, 960 F.3d 207, 209-12 (5th Cir. 2020). The First and Ninth Circuits also require actual transportation, but they stretch the exemption to reach wholly *intra*state movement. *See Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 17-26 (1st Cir. 2020); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 909-19 (9th Cir. 2020). But Judge Bress dissented in *Rittmann*, agreeing with then-Judge Barrett that § 1 covers only "a 'class of workers' that crosses state lines in the course of making deliveries." 971 F.3d at 921 (Bress, J., dissenting); *see id.* at 926, 928. Only that interpretation, he explained, adheres to *Circuit City*'s instruction to give the exemption "a narrow construction" and a "precise reading." *Id.* at 922 (citation omitted). Judge Bress also warned of the "significant problems of workability

and fairness" from the Ninth Circuit majority's broader approach. *Id.* at 930.

SUMMARY OF ARGUMENT

I. Section 1 of the FAA exempts workers that, unlike ramp-agent supervisors, participate directly in the cross-border transportation of goods or people. Saxon does not belong to such a class. She therefore must arbitrate her claim.

A. The FAA's text, context, and proarbitration purposes show that the "narrow" and "very particular" § 1 exemption is reserved only for classes of workers that participate directly in the transportation of goods or people through the channels of foreign or interstate commerce, a key feature of that work being crossing national or state borders. Workers who merely load and unload instrumentalities of commerce with cargo but do not transport that cargo anywhere do not satisfy the § 1 exemption.

1. The FAA's structure sets the stage. Section 2 has an "expansive" scope encompassing all contracts "involving commerce"—the outer limits of Congress' commerce power. *Circuit City*, 532 U.S. at 112-15. Section 1, by contrast, has a "limited reach," carving out only contracts of classes of workers "engaged in foreign or interstate commerce." *Id.* at 115. Congress' disparate use of language to limit the § 1 carveout serves proarbitration purposes. The statute places arbitration agreements on an equal footing with other contracts and requires courts to hold parties that agree to arbitrate to their word. Construing § 1 broadly would undo those important policy choices.

2. The residual clause's key phrase, "engaged in foreign or interstate commerce," is a term of art with limited reach. Its ordinary meaning is direct

participation in the cross-border transportation of goods or people. That means actually moving goods or people *through the channels* of foreign or interstate commerce. Common usage confirms that loading and unloading bags is not transportation.

Precedent aligns with this commonsense understanding. Interpreting statutes enacted around the same time as the FAA, the Court has consistently held that the phrase "engaged in commerce" means "direct participation in … the interstate flow of goods or services." *American Bldg. Maint. Indus.*, 422 U.S. at 283-84. The Court has refused to read the phrase to loop in activities having only a close "connection" to "the flow of commerce," because such a standard "has no logical endpoint." *Gulf Oil*, 419 U.S. at 198.

Crossing borders is an essential and defining part of foreign and interstate transportation. It was a commonplace activity for the "seamen" and "railroad employees" enumerated in § 1. And by choosing to specify "*foreign or interstate* commerce" rather than just "commerce," as it did in § 2, Congress indicated the importance of border crossing. Indeed, before Congress enacted the FAA, the Court consistently distinguished "interstate" transportation from transportation "wholly within a state." Section 1 reflects that understanding.

3. The enumerated workers in § 1—"seamen" and "railroad employees"— share a common attribute that confirms the residual clause's plain meaning. Both categories of workers participated directly in the cross-border transportation of goods or people. Seamen worked on vessels mostly during international voyages, and railroad employees worked on trains mainly during interstate trips. That service often took

both kinds of workers across borders, too. Contrast that work with the duties of stevedores, who loaded and unloaded cargo from vessels, didn't transport anything, and thus were not "seamen." Indeed, stevedores were not "seamen" for the very reason Saxon is not exempt from the FAA: they did not transport the cargo they handled on the vessels they loaded. And they certainly didn't do so while crossing borders.

B. Tying everything together is Congress' desire to promote arbitration and avoid litigation. There is no textually sound reason for interpreting § 1 broadly and every reason for reading the provision narrowly.

C. Saxon is a member of a class of workers supervising other workers who merely load and unload planes. Neither supervisors like Saxon nor the ramp agents themselves participate directly in transporting goods or people across borders. Indeed, they transport nothing at all, just like the stevedores—and especially like supervisors of stevedores—that Congress knowingly left out by specifying only "seamen" in § 1. They thus fail the "engaged in foreign or interstate commerce" requirement. Saxon must arbitrate her claim.

II. The court of appeals' reasoning and Saxon's arguments for construing § 1 broadly lack merit.

A. Although there is no textual hook for interpreting "engaged in foreign or interstate commerce" broadly, the court of appeals did so anyway by relying on the Federal Employers' Liability Act (FELA), a remedial statute using different language and serving a different purpose. For example, given FELA's remedial purpose, the Court interpreted it to reach workers with a "close connection" to interstate commerce. But that broad interpretation was based on what the

Court thought Congress wanted for *FELA*. Of course, the *FAA* must be interpreted "consistent with the *FAA's* purpose." *Circuit City*, 532 U.S. at 118 (emphasis added). And the FAA's overriding purpose is promoting arbitration, subject only to the narrow § 1 exemption.

B. *Circuit City* also warned against interpreting "engaged in foreign or interstate commerce" using old Commerce Clause cases. *See id.* at 116-18. But the court of appeals did that, too. What's worse, it relied on cases that were wrongly decided. For example, the court cited decisions erroneously giving stevedores "seamen" status even though both Congress and this Court have since corrected that misunderstanding.

C. Speculation that Congress intended to give § 1 a broad reach undermines the plain meaning of the statute and attributes illogical motives to Congress. Saxon may argue that Congress wanted § 1 to remove *all* transportation workers from the FAA's broad reach so that Congress could choose to create specialized grievance procedures for them instead. But that guesswork finds no support in the statute, makes little sense given that Congress could always enact new laws overriding the FAA, and ascribes to Congress an illogical intention to use a term of art with limited reach to create a gaping hole in the FAA's otherwise-expansive coverage.

ARGUMENT

I. Section 1 of the FAA exempts classes of workers that participate directly in the cross-border transportation of goods or people, unlike ramp-agent supervisors.

Section 1 of the FAA is very particular. It exempts only classes of workers that participate directly in the

transportation of goods or people through the channels of foreign or interstate commerce, work that regularly takes them across borders. Ramp-agent supervisors, like Saxon, transport nothing and cross no borders. Saxon therefore is not exempt from the FAA and must arbitrate her claim.

A. Section 1 covers classes of workers that participate directly in the transportation of goods or people through the channels of foreign or interstate commerce.

Text and context alike give § 1 a narrow meaning. While Congress used broad language in § 2 to extend expansive coverage, it limited § 1 by choosing precise language. The phrase "engaged in foreign or interstate commerce," in the transportation context, refers to *moving* goods or people *through* foreign or interstate channels. Such work necessarily requires crossing borders regularly. And the words "seamen" and "railroad employees" confirm that the relevant attribute of workers covered by § 1 is direct involvement in transporting goods or people in foreign or interstate commerce. Seamen and railroad employees perform just such tasks, with seamen more likely to cross national borders and railroad employees likely to cross state borders.

1. Congress used "very particular" language in § 1 to exempt "narrow" categories of transportation workers from § 2's "expansive" coverage.

The first clue that the § 1 exemption must be construed narrowly is its relationship to § 2's broad coverage. As *Circuit City* explained, § 2 is "expansive," using "the words 'involving commerce' … to regulate to the full extent of [Congress'] commerce power." 532

U.S. at 113-14. But in § 1, Congress used the disparate phrase "engaged in foreign or interstate commerce" right "after specific categories of workers." *Id.* at 118. And it put "foreign or interstate" before "commerce" even though § 1 already defined "commerce" as such in § 1. Courts must presume that "when Congress includes particular language in one section of a statute but omits it in another section of the same Act," it "acts intentionally." *Collins v. Yellen*, 141 S. Ct. 1761, 1782 (2021) (citation omitted). *Circuit City* rejected a broad reading of § 1 for that very reason: "it would make the § 1 exclusion provision superfluous." 532 U.S. at 113. Instead, the Court explained, "engaged in foreign or interstate commerce" is a term of art with "limited reach." *Id.* at 115-16. That interpretation cohered with Congress' "explicit reference to 'seamen' and 'railroad employees.'" *Id.* at 114.

As explained below, Congress designed the FAA this way to serve proarbitration purposes. Congress sought to eradicate the "hostility of American courts to the enforcement of arbitration agreements," *id.* at 111, by putting such agreements "on an equal footing with other contracts," *Rent-A-Center*, 561 U.S. at 67. Compelling "judicial enforcement of a wide range of written arbitration agreements" serves that purpose. *Circuit City*, 532 U.S. at 111. A broad exemption does not, especially if the most that one can infer is that Congress sought to promote alternative *arbitration* procedures. *See infra* pp. 30-33.

2. Being "engaged in foreign or interstate commerce" means moving goods or people across borders.

Circuit City held that § 1's residual clause covers transportation workers only. This case asks *what kind*

of transportation workers the clause reaches. The statute's text provides the answer: transportation "workers engaged in foreign or interstate commerce." When the FAA was enacted in 1925, and no less so than today, that meant only those workers directly participating in the transportation of goods or people through the channels of foreign or interstate commerce, a key feature of which was border crossing.

a. Take common usage. In the early twentieth century, "engaged" meant "occupied" or "employed." *Webster's New International Dictionary* 725 (1st ed. 1909). "Interstate commerce" meant "[t]raffic, intercourse, commercial trading, or the transportation of persons or property between or among the several states of the Union, or from or between points in one state and points in another state." *Black's Law Dictionary* 651 (2d ed. 1910). Put the terms together, and "engaged in interstate commerce" meant employment in transporting goods or people from state to state.

Of course, "transportation" did not (and does not) mean moving something a short distance—say, from the tarmac onto a plane. No English speaker would say that moving something, at most, a few hundred feet is "transporting" it. To borrow from an early edition of *Black's*, "transportation" means "[t]he removal of goods or persons from one place to another, by a carrier." *Id.* at 1168. Thus, for example, "[i]t would be a perversion of language … to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house." *Pipe Line Cases*, 234 U.S. 548, 562 (1914).

b. Consistent with this commonsense understanding, the Court's precedent in 1925 likewise defined "engaged in interstate commerce" to mean

"direct participation in … the interstate flow of goods or services." *American Bldg. Maint.*, 422 U.S. at 283-84. The phrase did not include activities only "perceptibly connected to … instrumentalities" of foreign or interstate commerce. *Gulf Oil*, 419 U.S. at 198. As *Circuit City* put it, the phrase's "plain meaning" had a "limited reach." 532 U.S. at 115, 118.

Consider *Gulf Oil*, on which *Circuit City* relied and which the court of appeals here ignored. *See* 532 U.S. at 117-18. There, this Court held that "engaged in commerce" under two antitrust statutes, the Clayton Act and Robinson-Patman Act, meant "persons or activities within the flow of interstate commerce," *Gulf Oil*, 419 U.S. at 195, not people or activities with merely a close "connection" to "the flow of commerce," *id.* at 198. Both statutes defined "commerce" the same way the FAA does, as *Circuit City* made clear. *See* 532 U.S. at 117-18. And under that plain meaning, *Gulf Oil* held, "a firm engaged in entirely intrastate sales of asphaltic concrete" was not "engaged in commerce" even though it sold the concrete for use in interstate highways. 419 U.S. at 188, 196. To be sure, those sales might have been "perceptibly connected" to interstate commerce. *Id.* at 198. But if just a "'nexus' to commerce" were sufficient, "[t]he universe of arguably included activities would be broad and its limits nebulous in the extreme" because "[t]he chain of connection has no logical endpoint." *Id.*

American Building Maintenance, on which *Circuit City* also relied and which the court of appeals likewise ignored, reaffirmed the narrow reach of "engaged in commerce" under the Clayton Act. 422 U.S. at 283-84. This Court held that janitorial companies were not "engaged in the flow of interstate commerce" because they "did not participate directly in the sale, purchase,

or distribution of goods or services in interstate commerce." *Id.* at 285. It made no difference that the companies served "enterprises which were themselves clearly engaged in" such commerce. *Id.* at 283. The Court again rejected a "connection" standard; instead, it required that each person or entity "must itself" directly participate in the "flow of interstate commerce." *Id.* at 283-84.

Gulf Oil and *American Building Maintenance* didn't break new ground. Earlier precedent rejected a mere "connection" test in favor of analyzing whether the worker actually transported or sold the goods traveling in interstate commerce. In *Hopkins v. United States*, 171 U.S. 578, 587-88 (1898), for example, the Court held that salesmen selling cattle imported from out of state were not "engaged in … interstate commerce" under the Sherman Act. The Court analyzed what the salesmen did and where they did it, noting that they neither "purchase[d] the cattle themselves" nor "transport[ed] them," but instead only "receive[d] them at Kansas City," where the sales eventually occurred. *Id.* at 590. While the salesmen certainly were "connected with" the cattle, which were "articles of interstate commerce," that was not enough "to make [their services] a portion of interstate commerce." *Id.* at 590-91.

c. Applying this direct-participation requirement to § 1 of the FAA is straightforward. The residual clause exempts only classes of workers that "participate directly" in the foreign or interstate transportation of goods or people. *American Bldg. Maint.*, 422 U.S. at 285. That means actually moving goods or people across borders through the channels of commerce. That's because this Court's precedents require direct participation in the flow of commerce.

And § 1's reference to "seamen" and "railroad employees," as *Circuit City* instructs, restricts the inquiry to transportation (rather than, for instance, cross-border sales). So while § 2 requires only a "sufficient nexus" to commerce, *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 53 (2003) (per curiam), § 1 requires direct participation in transporting goods or people through commerce. Anything less is only "an aid or facility" to transportation, not interstate transportation itself, *Hopkins*, 171 U.S. at 587, and so does not satisfy the FAA's "engaged in" requirement, 9 U.S.C. § 1.

Then-Judge Barrett reached the same conclusion: "transportation workers are those who are actually engaged in the movement of goods in interstate commerce." *Wallace*, 970 F.3d at 801 (quotation marks and citation omitted). Section 1 doesn't reach workers who merely are "connected" to goods traveling "across state or national borders." *Id.* at 802. Workers must be "actively engaged in the movement of goods across interstate lines" to fall within the exemption. *Id.*

d. Border crossing is an important part of foreign or interstate transportation. Railroad employees and particularly seamen regularly crossed borders. In fact, the Shipping Commissioners Act of 1872 reached only seamen who sailed internationally or from Atlantic ports to Pacific ports, or vice versa. *See* 17 Stat. 262, 264, § 12; *see also infra* pp. 24-26. And before Congress enacted the FAA, the Court consistently distinguished "interstate transportation" from transportation "wholly within a state." *New York ex rel. Pa. R.R. v. Knight*, 192 U.S. 21, 27 (1904); *see also St. Louis-San Francisco Ry. v. Public Serv. Comm'n of Mo.*, 261 U.S. 369, 371 (1923); *Osborne v. Florida*, 164 U.S. 650, 655 (1897); *Gladson v. Minnesota*, 166 U.S. 427, 431-32 (1897).

In *Knight*, for example, the Court held that a cab service bringing passengers to and from a ferry and operating entirely within New York City was not "engaged in interstate transportation" even though the ferry carried passengers across state lines. 192 U.S. at 27-28. Consistent with *Hopkins*, *Gulf Oil*, and *American Building Maintenance*, the Court focused on the "character of the service" rather than "the action of the passenger." *Id.* at 25. Because "the cab service [was] rendered wholly within the state," the Court held that it did not directly participate in interstate transportation, even though, from the passenger's "standpoint, the company's cab service [was] simply one element in a continuous interstate transportation." *Id.* at 26-27.

Like *Gulf Oil*, *Knight* rejected a "close relation to interstate commerce" standard. *Id.* at 28. "[M]any things have more or less close relation to interstate commerce which are not properly to be regarded as a part of it," the Court explained. *Id.* If the cab service were "engaged in interstate transportation," the Court asked, then what about the porter who carries the luggage or the driver of the carriage or even the supplier of hay for the horses? *Id.* Unable to say where "the limit [would] be placed," the Court held that the cab service operating "wholly within a state" was not engaged in interstate transportation. *Id.* at 27-28.

3. The typical activities of seamen and railroad employees likewise show that "workers engaged in foreign or interstate commerce" participate directly in the foreign or interstate transportation of goods or people.

Another key feature of § 1 confirms that "engaged in foreign or interstate commerce" means direct

participation in cross-border transportation. *Circuit City* explained that "the residual clause should be read to give effect to the terms 'seamen' and 'railroad employees'" under the *ejusdem generis* principle. 532 U.S. at 115. Thus, as then-Judge Barrett put it, "the scope of the residual clause" is confined to "work analogous to that of seamen and railroad employees." *Wallace*, 970 F.3d at 802. And "'seamen' and 'railroad employees' traditionally operate across international and state boundaries (with a seaman more prone to foreign commerce and a railroad employee more likely to be engaged in interstate commerce, a parallelism that is in fact reflected in the text of § 1)." *Rittmann*, 971 F.3d at 927-28 (Bress, J., dissenting).

a. The *ejusdem generis* canon tells courts to construe general words following a list of specific words to include only persons or things that are "similar in nature" to the enumerated categories. *Circuit City*, 532 U.S. at 114-15 (citation omitted); *see also* A. Scalia & B. Garner, *Reading Law* 199-213 (2012). Courts first identify the "common attribute" connecting the specific words, *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 224-26 (2008), considering the specific words' meaning, *e.g.*, *Washington State Dep't of Soc. & Health Servs. v. Guardianship Est. of Keffeler*, 537 U.S. 371, 383 (2003), and the statutory context, *e.g.*, *Norton v. Southern Utah Wilderness All.*, 542 U.S. 55, 62-63 (2004). The general phrase, in turn, "is confined to covering subjects comparable to the specifics it follows," *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008), "to ensure that [the] general word[s] will not render [the] specific words meaningless," *CSX Transp., Inc. v. Alabama Dep't of Revenue*, 562 U.S. 277, 295 (2011).

Although an important guide to meaning, *ejusdem generis* does not require a perfect fit. The goal is to "[c]onsider the listed elements, as well as the broad term at the end, and ask what category would come into the reasonable person's mind." *Reading Law* 208. Whatever the common attribute of the specific terms, the general phrase "must be similarly limited." *Ali*, 552 U.S. at 224. If the general clause instead covered all the enumerated categories, "Congress would have had no reason" for the enumeration in the first place. *Yates v. United States*, 574 U.S. 528, 546 (2015) (plurality); *see id.* at 551 (Alito, J., concurring in the judgment); *see also Circuit City*, 532 U.S. at 114. Still, the general phrase must reach *something* "that would not also fall within one of the specifically enumerated categories," or else it serves no purpose. *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 163 (2012). And the principle applies even if not every example of an enumerated category would fit the common attribute. Thus, for example, a statute making it "unlawful to bring any 'knives, daggers, swords, or any other similar object onto an airplane,'" would surely cover a dull knife even though the general phrase would encompass only things that are "traditionally sharp." *Rittmann*, 971 F.3d at 928 (Bress, J., dissenting).

b. Applying *ejusdem generis* here confirms that § 1's residual clause is limited to workers directly involved in cross-border transportation. Seamen fit the bill perfectly. And although Saxon may contend that "railroad employees" bears a broader meaning when read in isolation, the term keeps company with the very circumscribed term "seamen," and the terms' common attribute remains cross-border transportation. Broader understandings in other contexts don't

show otherwise. This reading also gives the residual clause separate force, because many non-seamen and non–railroad employees still would be covered by § 1, like classes of pilots and interstate truck drivers.

Seamen. When Congress enacted the FAA in 1925, "seamen" was a "term of art" limited to workers who rode the waves transporting goods or people. *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 487 (2005). A "seaman" was a "sea-based maritime employee," *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 348 (1991), whose status turned on being a member of a vessel and their "relationship as such to the vessel and its operation in navigable waters," *Chandris, Inc. v. Latsis*, 515 U.S. 347, 359-60 (1995). Seaman status thus was limited to individuals who spent a significant "portion of their time … at sea." *Id.* at 364.

Congress adopted that understanding in two statutes enacted before the FAA. *First*, the Shipping Commissioners Act defined "seaman" as "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board [a vessel]." 17 Stat. at 277, § 65. And the act elsewhere made clear that a "seaman" was directly connected to the vessel's international or interstate voyage. *See, e.g.*, 17 Stat. at 264, 273, §§ 12, 51. Most instructive was the requirement that the "master of every ship bound from a port in the United States to any foreign port, or of any ship … bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew." 17 Stat. at 264, § 12.

Second, § 33 of the Merchant Marine Act of 1920, also called the Jones Act, *see Bainbridge v. Merchants'*

& Miners' Transp. Co., 287 U.S. 278, 279 (1932), adopted the definition of "a seaman under the general maritime law" at the time, *Wilander*, 498 U.S. at 342. That definition, as noted, was limited to workers who plied the waves—workers "employed on board a vessel in furtherance of its purpose." *Id.* at 346.

But "seamen [did] *not* include land-based workers." *Id.* at 348 (emphasis added). And the prime example of a land-based worker in the early twentieth century was a "stevedore," "[a] person employed in loading and unloading vessels." *Black's Law Dictionary* 1110 (2d ed. 1910); *see also Wilander*, 498 U.S. at 346-47. (Today the term is "longshoreman," *see Black's Law Dictionary* 1130 (11th ed. 2019), since a "stevedore" is now the "person or company that hires longshore and harbor workers to load and unload ships," *see id.* at 1711.) The main reason stevedores were not considered seamen is because their relation to vessels' voyages was insubstantial. As this Court has put it, "[t]he duration of a worker's connection to a vessel and the nature of the worker's activities, taken together, determine whether a maritime employee is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on the vessel at a given time." *Chandris*, 515 U.S. at 370. Merely loading and unloading a vessel's cargo was insufficient for seaman status.

Saxon suggested below that, in 1925, stevedores *were* seamen. But the Shipping Commissioners Act plus *Chandris* and *Wilander* prove just the opposite. *See also infra* pp. 42-44. The court of appeals, in turn, reasoned that stevedores are not seamen solely because they, as land-based workers, are not exposed to "hazards … on the open seas." Pet. App. 14a. But

that's not the test either. *Chandris* rejects that very reasoning: "[s]eaman status is not coextensive with seamen's risks." 515 U.S. at 361. When Congress enacted the FAA in 1925, primarily working on a vessel during an international or interstate voyage was "the essence of what it mean[t] to be a seaman." *Id.* at 369.

Railroad employees. The term "railroad employees" is somewhat ambiguous. Competing definitions ranged from "anyone engaged in the customary work directly contributory to the operation of the railroads," *New Prime*, 139 S. Ct. at 543 (quotation marks and citation omitted)—*i.e.*, all employees of a railroad—to "persons actually engaged in or connected with the movement of any train," Hours of Service Act, 34 Stat. 1415, 1416, § 1 (1907); *see also* Boiler Inspection Act, 36 Stat. 913, 913 § 1 (1911). But the juxtaposition of "railroad employees" with "seaman," the narrowing "engaged in foreign or interstate commerce" language discussed above, and the statutory purpose discussed below all show that Congress meant the narrower sense in § 1 of the FAA.

Just as seamen traveled from port to port, railroad employees covered by the Hours of Service Act traveled from state to state. Take the "conductor and two brakemen" who "customarily" worked on a train that traveled from California to Arizona. *Atchison, Topeka & Santa Fe Ry. v. United States*, 244 U.S. 336, 338 (1917). Or the flagman who "work[ed] on an interstate commerce freight train" traveling from Missouri to Illinois. *St. Louis, Iron Mountain & S. Ry. v. McWhirter*, 229 U.S. 265, 266-67 (1913). But "railroad employees" excluded individuals who, although employed by the railroad, did not directly participate in "the *transportation* of passengers or property by railroad." *Baltimore & Ohio R.R. v. Interstate Com. Comm'n*, 221

U.S. 612, 617 (1911) (emphasis added). Thus, for example, the term did not cover workers tasked with "the breaking up and making up of trains, the prompt movement of cars, and general charge of the [rail] yard." *Atchison, Topeka & Santa Fe Ry. v. United States*, 269 U.S. 266, 268 (1925).

This narrower understanding of railroad employees, requiring direct engagement in transportation, makes the most sense under § 1 of the FAA. Although "railroad employees," read alone, can "be given a wide meaning," the term's statutory "surroundings" provide important "color." *United States v. American Trucking Ass'ns*, 310 U.S. 534, 544-45 (1940); *see also id.* at 545 n.29. Given everything we know about the FAA, *see Circuit City*, 532 U.S. at 118-19, 122-23, and the lack of a textual hook to the contrary, the Court should not give "railroad employees" an "unintended breadth" that would be "inconsistent with its accompanying words." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (citation omitted).

The § 1 exemption focuses on what workers do—whether the "class of workers [is] engaged in foreign or interstate commerce"—rather than what kind of business the employer operates. The inquiry for railroad-employee status likewise should focus on the employee's activities, not on whether the employer is a railroad. And the test for those duties, consistent with the residual clause, should be whether workers directly participate in transporting people or goods across borders. *See supra* pp. 16-21. Just working on the railroad all the livelong day is not enough. If it were, § 1 might sweep in all the railroad employees Congress could reach at the furthest extent of its Commerce Clause power, despite Congress' evident intent to reach that far only in § 2, not § 1.

Congress' association of "seamen" and "railroad employees" further supports this narrow focus. *See, e.g.*, *Neal v. Clark*, 95 U.S. 704, 708-09 (1878) (construing "fraud" narrowly to reach only "positive fraud" rather than "implied fraud" given the term's juxtaposition with "embezzlement"). The test for seaman status similarly looks to the employee's activities, asking whether the worker spends a significant portion of time on a vessel, *i.e.*, an instrumentality of foreign or interstate commerce. *Supra* pp. 24-26. And, importantly, this narrow reading also better furthers the FAA's "liberal federal policy favoring arbitration agreements." *New Prime*, 139 S. Ct. at 543 (citation omitted).

Common attributes of seamen and railroad employees. Seamen's and railroad employees' duties overlapped in two important ways that inform the meaning of the residual clause.

First, both kinds of workers were directly involved in transporting goods or people on instrumentalities of foreign or interstate commerce. Seamen were crewmembers who worked on vessels sailing the high seas, directly participating in the movement of people or goods, *see Chandris*, 515 U.S. at 361-65, 370; *Wilander*, 498 U.S. at 348, and they did not include stevedores who loaded and unloaded cargo from shore, *Wilander*, 498 U.S. at 346-47. Railroad employees could be similarly limited, as under the Hours of Service Act and Boiler Inspection Act, covering workers who rode the rails but not those who helped prepare trains or watch over the railyard. *Compare Atchison, Topeka & Santa Fe Ry.*, 244 U.S. at 338, *and St. Louis, Iron Mountain, & S. Ry.*, 229 U.S. at 266-67, *with Baltimore & Ohio R.R.*, 221 U.S. at 617, *and Atchison, Topeka & Santa Fe Ry.*, 269 U.S. at 268.

Second, both seamen and railroad employees predominantly served in cross-border capacities. Seamen status turned on having a relationship to and working on vessels, and vessels transported goods and people across borders, usually national but sometimes state. Railroads crossed borders too, mostly state but sometimes national.

Under *ejusdem generis*, these common attributes of seamen and railroad employees inform the meaning of § 1's residual clause. That's true not just because the common characteristics of specified categories inform the meaning of a general phrase. It's also true because each component of § 1's narrow phrasing fits together to reach far less conduct than § 2's "involving commerce" language.

Take Congress' specification of "foreign or interstate commerce." For one thing, if Congress didn't want to emphasize border-crossing, then it didn't need to use the words "foreign or interstate" in the first place. It had already defined "commerce" to cover foreign and interstate conduct earlier in § 1. *See* 9 U.S.C. § 1. Again, Congress' disparate word choice was for a reason. So was the unusual choice to place "foreign" before "interstate." The decision below switched the order of those words eight times, *see* Pet. App. 8a-11a, 14a, 20a, but that peculiar order is important. It parallels the order of "seamen" and "railroad employees," with the former mainly crossing national borders and the latter mostly crossing state borders. "That word choice may not mean everything, but it does supply further evidence still that Congress" had in mind the core concept of cross-border transportation. *New Prime*, 139 S. Ct. at 541. Leading with seamen, workers whose duties most reliably met that test, makes

that clear. *See Rittmann*, 971 F.3d at 927-28 (Bress, J., dissenting).

To be sure, seamen did not work on vessels all the time, so they were not transporting goods or people across borders every day. But because seamen served "a significant portion" of their time at sea sailing from port to port, *Chandris*, 515 U.S. at 361 (citation omitted), border crossing was more common than not. Similarly, railroads operated interstate and intrastate, and workers who served in non-transportation roles could be considered "railroad employees" when the term is understood in its broadest possible sense. But railroads' regular *interstate* operations and the typical duties of their employees, when compared with seamen's duties, confirm that Congress had in mind workers who rode the rails while transporting goods or people between states, just as it had in mind workers who plied the waves while transporting goods or people across the sea. These same characteristics thus limit the workers covered by the residual clause.

* * *

The plain meaning of § 1's residual clause is direct participation in cross-border transportation—actually moving goods or people through channels of foreign or interstate commerce. That reading finds support in the FAA's text, context, and proarbitration purposes.

B. The FAA's purpose confirms that § 1 should be narrowly construed.

Although the Court need not resort to the FAA's purpose given the interpretive principles discussed above, that purpose only confirms that § 1 should be interpreted narrowly. As *Circuit City* explained, "the FAA's purpose" of "seek[ing] broadly to overcome judicial hostility to arbitration agreements" "further

compel[s] that the § 1 exclusion provision be afforded a narrow construction." 532 U.S. at 118 (citation omitted). Construing § 1 to reach only workers who transport goods and people across borders just like seamen and railroad employees do furthers the FAA's "liberal federal policy favoring arbitration agreements." *New Prime*, 139 S. Ct. at 543 (citation omitted). Saxon's interpretation does not.

"The FAA reflects the fundamental principle that arbitration is a matter of contract." *Rent-A-Center*, 561 U.S. at 67. It instructs courts to treat arbitration agreements just like all "other contracts," *id.*, as "valid, irrevocable, and enforceable," 9 U.S.C. § 2. The whole point of the FAA is to honor those agreements to arbitrate and "avoid" litigation. *Circuit City*, 532 U.S. at 123 (citation omitted).

Congress' command reflects the "real benefits" of arbitration. *Id.* at 122-23. Arbitration reduces costs for plaintiffs and defendants alike, maximizes the speed and efficiency of resolving disputes, enables parties to submit technical disagreements to expert adjudicators, and eases the burden on courts. *Concepcion*, 563 U.S. at 348. And *Circuit City* made clear that these benefits matter in the employment context. 532 U.S. at 123. That explains why Congress extended the FAA as far as it could, "exercis[ing] [its] commerce power to the full," *id.* at 112 (citation omitted), with one narrow exception: § 1's exemption for certain transportation workers.

The statute itself does not say why Congress made that exception, and "the legislative record on the § 1 exemption is quite sparse." *Id.* at 119. The Court, however, has surmised that "it is a permissible inference that the employment contracts of the classes of

workers in § 1 were excluded from the FAA precisely because of Congress' undoubted authority to govern the employment relationships at issue by the enactment of statutes specific to them." *Id.* at 120-21. On that hypothesis, Congress already had on the books "legislation providing for the arbitration of disputes between seamen and their employers" as well as "grievance procedures" for railroad employees, and "did not wish to unsettle [those] established or developing statutory dispute resolution schemes." *Id.* at 121. Given the importance of the "free flow of goods" in foreign and interstate commerce, *id.*, the thinking goes, Congress did not want to leave disputes to "whatever arbitration procedures the parties' private contracts might happen to contemplate." *New Prime*, 139 S. Ct. at 537.

That theory accords with interpreting § 1 narrowly, as *Circuit City* proves. No statute pursues its purposes at all costs, let alone a hypothetical purpose later ascribed by courts absent clear textual indicators. What the FAA *does* make clear, in § 2, is that Congress intended the statute to have broad reach. So it would make little sense to read § 1 broadly to cover all workers in the transportation industry just because Congress' presumed purpose might have been to give itself flexibility to pass some future "specific legislation for those engaged in transportation." *Circuit City*, 532 U.S. at 121. After all, future legislation could override the FAA.

Moreover, interpreting § 1 broadly would create daunting line-drawing problems, "breeding litigation from a statute that seeks to avoid it." *Id.* at 123 (citation omitted). "[M]any of the Nation's employers," including Southwest, have adopted effective "alternative dispute resolution procedures." *Id.* But a broad

reading of § 1, even limited to the transportation-worker context, raises more questions than it answers, as the confusion in the lower courts shows. *See supra* pp. 9-11. The Court's early Commerce Clause cases provide fair warning:

> [M]any things have more or less close relation to interstate commerce which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed?

Knight, 192 U.S. at 28. "The text of the FAA does not help" resolve these inevitable line-drawing problems. *Rittmann*, 971 F.3d at 930 (Bress, J., dissenting).

C. Ramp-agent supervisors, who transport nothing and cross no borders, are not exempt from the FAA.

Section 1 reaches only workers who participate directly in cross-border transportation of people or goods. But neither ramp agents nor their supervisors fit that description. They're not employed to transport passenger luggage from one state to another. They're not employed to transport luggage *anywhere*. Rather, ramp agents fill and empty planes with luggage before and after *other workers* (like pilots) do the transporting. And ramp-agent supervisors are even further removed from the actual transporting.

It does not matter that ramp agents may be *connected* to the transportation process. The plain meaning of "engaged in foreign or interstate commerce" does not include a "nexus" component. *Supra* pp. 16-21. The precise language of § 1 also prevents ramp agents and their supervisors from relying on their employers' status as a transportation company. Section 1 targets the *employees'* conduct, not the *employers'* operations.

Nor can supervisors (like Saxon) rely on the conduct of their supervisees. In fact, in *Chandris v. Latsis* and *Wilander*, the Court asked whether Latsis and Wilander satisfied the seaman test themselves, even though they were both supervisors, *see* 515 U.S. at 350; 498 U.S. at 339. Thus, ramp-agent supervisors must satisfy the "direct participation in transportation" standard themselves; they must, like seamen and railroad employees, spend a significant portion of their time actually transporting goods through channels of foreign or interstate commerce.

Ramp-agent supervisors fail that test. For one thing, their job responsibilities are "meant to be purely supervisory" and they can't rely on what ramp agents do. Pet. App. 3a. "[A]t most," ramp-agent supervisors assist in the loading process a few times a week. Pet. App. 38a; *see also* Pet. App. 9a-10a. In any event, even ramp agents' duties don't matter, because their work is just an "aid or facility" to transportation, not transportation itself. *Hopkins*, 171 U.S. at 587. And ramp agents certainly do not cross borders. Because ramp-agent supervisors transport nothing, they are not a "class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

Stevedores are particularly instructive. By specifying "seamen" in § 1, Congress implicitly excluded stevedores even though such workers loaded vessels with cargo and thus had a "close connection" to foreign commerce. *See Reading Law* 107 (negative-implication canon). Naturally, those who supervised stevedores were excluded too. The question here is not whether Congress' choice "was good policy," *Epic Sys.*, 138 S. Ct. at 1622, but whether ramp-agent supervisors, who at most supervise workers analogous to stevedores, are similarly excluded from § 1's limited reach. There is just one answer: ramp-agent supervisors cannot rely on the § 1 exemption. Saxon must therefore abide by her contract and arbitrate.

II. The court of appeals' and Saxon's arguments for construing § 1 broadly lack merit.

The decision below is wrong. The court interpreted the residual clause to cover all classes of workers that are "so closely related to interstate transportation as to be practically a part of it." Pet. App. 17a (alteration adopted; citation omitted). That expansive reading adds words to the statute and flouts *Circuit City*'s command that "the § 1 exclusion provision be afforded a narrow construction." 532 U.S. at 118. Section 1 provides "no textual hook for expansion," *Hall St. Assocs.*, 552 U.S. at 586, and purpose cuts against Saxon too.

What's more, the court of appeals' and Saxon's justifications for construing § 1 broadly fail on their own terms. Shunning the narrow-construction rules this Court has repeatedly said apply to § 1, the Seventh Circuit relied on the broadly construed Federal Employers' Liability Act, a statute that differs from the FAA in every relevant respect. It also leaned heavily on old Commerce Clause decisions resting on a

definition of "seaman" that both Congress and this Court have since repudiated as wrong when the FAA was enacted. And beyond all that, the decision below contravenes the FAA's proarbitration purposes.

A. There is no textually sound reason for interpreting "engaged in foreign or interstate commerce" broadly.

The court of appeals defined "engaged in foreign or interstate commerce" by looking to FELA. That approach is wrong. Unlike the FAA, which controls *how* claims are to be resolved and *avoids* litigation, FELA is a remedial law that *creates* claims for persons injured on the job and thus *starts* litigation. The court also cited old Commerce Clause cases that were wrongly decided. By relying on an irrelevant statute and incorrect precedent rather than the interpretive principles *Circuit City* instructed courts to apply, the court misconstrued the residual clause to reach workers outside § 1's plain text.

1. FELA does not inform the meaning of the FAA.

Ordinary interpretive principles and this Court's guidance show that FELA is irrelevant. *Circuit City* instructs that the phrase "engaged in commerce" does not "necessarily have a uniform meaning whenever used by Congress." 532 U.S. at 118 (quoting *American Bldg. Maint.*, 422 U.S. at 277). Instead, the phrase must be construed "with reference to the statutory context in which it is found and in a manner consistent with the [statute's] purpose." *Id.* FELA's text, purpose, and focus all show that it is a broad exercise of Congress' power to regulate commerce, quite different from the narrow and limited text in § 1 of the FAA.

a. Start with FELA's text, which differs in important ways from the FAA's. When Congress enacted the FAA, FELA provided that "every common carrier by railroad while engaging in commerce between any of the several States ... shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." 35 Stat. 65, 65, § 1 (1908). Section 1 of the FAA, in contrast, reached only "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Among the many textual differences: (1) FELA first focuses on the *employer's* business, while § 1 of the FAA targets the employee's work only; (2) FELA refers to employees in their individual capacity ("any person"), while the FAA addresses "class[es] of workers"; (3) FELA neither enumerates workers, like "seamen" and "railroad employees," nor includes a residual clause; and (4) FELA's language *extends* broad coverage, like FAA § 2, while FAA § 1 *narrows* broad coverage.

These textual disparities reflect significant differences in statutory purpose and scope. While § 1 of the FAA is a "narrow" and "very particular" carveout from § 2's expansive scope, *supra* pp. 15-16, "FELA is a broad remedial statute," *Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 562 (1987). Congress liberally gave railroad workers injured on the job a cause of action against their employers, using "broad language" to define the statute's "coverage." *Id.* at 561; *see* 35 Stat. at 65-66, §§ 1, 5. And given FELA's "remedial and humanitarian purpose," *Urie v. Thompson*, 337 U.S. 163, 181 (1949), the Court has interpreted the statute "even more broadly," *Buell*, 480 U.S. at 562, to "cover[] a vast field," *New York Cent. & Hudson River R.R. v. Carr*, 238 U.S. 260, 262 (1915).

To achieve FELA's broad remedial purpose, Congress toed "the outer limits" of its Commerce Clause power as then understood. *See Circuit City*, 532 U.S. at 116, 118. History and precedent prove the point. After Congress first passed FELA in 1906, the Court held it unconstitutional because it reached purely intrastate activities—"subjects wholly beyond the power to regulate commerce." *Employers' Liability Cases*, 207 U.S. 463, 499 (1908). The Court's concern was that the 1906 law applied "without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury." *Id.* at 498.

So when Congress reenacted FELA in 1908, it clarified that the statute reached "any person suffering injury while he is employed by such carrier in such commerce." 35 Stat. at 65. The Court upheld the new law, reasoning that it imposed liability on an employer only "for injuries sustained by its employees while engaged in [interstate] commerce." *Second Employers' Liability Cases*, 223 U.S. 1, 51-52 (1912). In the Court's view, the new language made the statute constitutional because it required both the employer and employee to have a "substantial connection" to "interstate commerce." *Id.* at 49.

The Court understood FELA to have a scope "so broad that it cover[ed] a vast field about which there [could] be no discussion." *Carr*, 238 U.S. at 262. And the test it soon adopted for determining FELA's broad scope reflected that understanding. In *Pedersen v. Delaware, Lackawanna & Western Railroad*, 229 U.S. 146, 151 (1913), the Court interpreted FELA to reach employees whose activities at the moment of injury were "so closely connected" to interstate commerce "as to be a part of it." That interpretation, the Court

explained, "[spoke] of interstate commerce, not in a technical legal sense, but in a practical one better suited to the occasion." *Shanks v. Delaware, Lackawanna, & W. R.R.*, 239 U.S. 556, 558 (1916). In other words, the Court's broad construction was driven less by the statute's text and more by what it viewed as "the evident purpose of Congress." *Id.*

What's more, that "connection" standard focused not on whether the plaintiff's activities were interstate *commerce* (the issue here), but on whether they were *interstate* or *intrastate*. It also focused on the plaintiff's activities at the moment of injury—unlike the FAA's focus on the "class of workers." As a result, the "connection" standard led to "much confusion," *Southern Pac. Co. v. Gileo*, 351 U.S. 493, 497 (1956), just as the dissenters in *Pedersen* had predicted, *see* 229 U.S. at 154-55 (Lamar, J., dissenting). For example, although FELA reached an iron worker preparing to repair a bridge carrying interstate traffic, *Pedersen*, 229 U.S. at 151-52, it didn't reach a worker who "handled *interstate* and *intrastate*" trains because, "at the time of the fatal injury," he was handling only trains "loaded with *intrastate* freight," *Illinois Cent. R.R. v. Behrens*, 233 U.S. 473, 476, 478 (1914) (emphasis added). Because none of this line-drawing furthered FELA's broad remedial purpose, Congress amended the law in 1939 to make "plain" its intended expansive scope. *Gileo*, 351 U.S. at 498. The revised language clarified that FELA reaches "[a]ny employee of a carrier" whose duties were "in furtherance of interstate or foreign commerce" or "in any way directly or closely and substantially, affect[ing] such commerce." 53 Stat. 1404, 1404, § 1 (1939).

b. FELA bears little resemblance to the FAA. Congress wanted FELA to reach broadly, while § 1 of

the FAA slices a narrow exception from the FAA's purposely broad reach. *Supra* pp. 15-16. In fact, it is § 2's broad coverage provision that most resembles FELA. And Congress enacted FELA to create claims for individuals injured on the job, while the FAA "revers[ed] centuries of judicial hostility to arbitration agreements." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510 (1974). While FELA's approach required courts to separate interstate from intrastate activities at the time of the injury, § 1 of the FAA, being a "very particular qualification," requires a different analysis. *New Prime*, 139 S. Ct. at 537. Section 1 asks whether a "class of workers" is "engaged in foreign or interstate commerce"—which, under *Circuit City*, requires a narrower inquiry than just separating interstate from intrastate commerce. *See* 532 U.S. at 118. Indeed, § 1 mentions "seamen" who, the Court has warned, should *not* be identified with "a snapshot test …, inspecting only the situation as it exists at the instant of injury; a more enduring relationship is contemplated." *Chandris*, 515 U.S. at 363 (internal quotation marks and citation omitted).

What's more, relying on FELA to interpret the FAA would produce the very line-drawing problems Congress had to fix. Such "considerable complexity and uncertainty" is precisely what the FAA seeks "to avoid." *Circuit City*, 532 U.S. at 123 (citation omitted). Given all these differences, it's no wonder that neither *Circuit City* nor *New Prime* found FELA relevant to construing the FAA.

c. Despite all these significant differences, the court of appeals followed FELA to the letter. It held that cargo loaders are "engaged in commerce for purposes of § 1," Pet. App. 12a, because they are "so closely related to interstate transportation as to be

practically a part of it," Pet. App. 10a (citation omitted). But as just discussed, that "connection" standard has no basis in the text of the FAA. And reading such an unadministrable test into the FAA would create more problems than it solves. The Court should not look to FELA when interpreting the FAA's residual clause. It instead should follow *Circuit City*, which cited approvingly the "flow of interstate commerce" standard. 532 U.S. at 117-18.

The court of appeals also erred by citing FELA for the proposition that "railroad employees" in the FAA should be construed broadly. FELA does not define "railroad employees." No matter, the court reasoned, because FELA contemplates that "railroad employees" includes "those whose work was 'so closely related to interstate transportation as to be practically a part of it.'" Pet. App. 17a (alteration adopted; citation omitted). In other words, the court failed to explain what "railroad employees" meant, other than that they must be "closely connected" to interstate commerce. That logic not only is circular, it also lacks a textual leg to stand on. That's why both the Hours of Service Act and Boiler Inspection Act, which tied railroad employees to the actual *movement* of trains, provides better guidance to the meaning of that same term in the FAA. *See supra* pp. 26-28.

2. Outdated Commerce Clause cases do not inform the meaning of the FAA, either.

The court of appeals also relied on old Commerce Clause cases that were wrongly decided. As a result, the court erroneously ignored the clear and narrow meaning of "seamen," which does not include the land-based stevedores who load and unload ships.

a. Saxon may argue that the same outdated Commerce Clause decisions she cited below show that loading and unloading cargo must be interstate commerce under § 1 of the FAA. But those decisions are irrelevant for the very reason *Circuit City* suggests: they ask whether Congress had the constitutional power to regulate, not how far a statute reached. Indeed, the phrase "engaged in foreign or interstate commerce" is a statutory term appearing nowhere in the Constitution. Because Commerce Clause cases focus exclusively on what Congress constitutionally can do (or what states cannot do), they do not help resolve the statutory interpretation question presented here.

b. The court of appeals mistakenly relied on a handful of Commerce Clause decisions for the claim that "stevedores and longshoremen, the dockworkers who loaded and unloaded ships at port," were "engaged in foreign or interstate commerce." Pet. App. 11a. For starters, those cases are irrelevant. Take *Northern Coal & Dock Co. v. Strand*, 278 U.S. 142, 144, 147 (1928), which said only that unloading a ship has a "direct relation to commerce and navigation" in deciding that Wisconsin could not regulate such conduct. The Court did not hold that unloading a ship *is* interstate commerce for any particular statutory purpose, much less analyze whether the stevedore was "engaged in foreign or interstate commerce."

All these stevedoring cases have a more fundamental problem, however: they relied on a mistaken understanding of "seamen." As *Chandris* and *Wilander* explain, "seaman" is a term of art that doesn't include stevedores, the workers who load or unload ships. *Chandris*, 515 U.S. at 358-59; *Wilander*, 498 U.S. at 347-48. A year after Congress enacted the FAA, however, the Court mistakenly interpreted

"seamen" under the Jones Act to include stevedores. *See International Stevedoring Co. v. Haverty*, 272 U.S. 50, 52 (1926). That was a mistake, this Court later made clear, because "seaman" was (and still is) a term of art that excludes stevedores because they do not spend a significant "portion of their time … at sea." *Chandris*, 515 U.S. at 364; *see supra* pp. 24-26.

To be sure, it took the Court until 1946 to recognize its error, even though Congress passed the Longshore and Harbor Workers' Compensation Act just six months after *Haverty* to reestablish the "clear distinction between land-based and sea-based maritime workers." *Wilander*, 498 U.S. at 347. But that timing doesn't help Saxon. The FAA says "seaman," a term of art excluding stevedores in 1925. The Court's *1926* decision, which the Court has since acknowledged was wrong when it was decided, cannot prove otherwise. (And even if it could, *Haverty* applies only to the Jones Act, not the term of art under maritime law that Congress meant to incorporate into the FAA. *See id.* at 348.)

Why does all this matter? Because the court of appeals relied on this misunderstanding to conclude that loading and unloading goods *is* interstate commerce. The syllogism goes like this: seamen are engaged in interstate commerce, and stevedores, who load and unload cargo, are seamen, too. *See Strand*, 278 U.S. at 146 (relying on *Haverty*); *Puget Sound Stevedoring Co. v. Tax Comm'n*, 302 U.S. 90, 92-93 (1937) (quoting *Haverty*, 272 U.S. 50); *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 430 (1947) (following *Puget Sound*). But stevedores aren't seamen. Seamen status is connected to time at sea; they primarily worked on vessels during an international voyage. Loading or unloading cargo had nothing to do with it.

Supra pp. 24-26. For the same reason, *Department of Revenue v. Association of Washington Stevedoring Cos.*, 435 U.S. 734 (1978), doesn't help Saxon either. There, the Court simply quoted *Puget Sound* and *Carter & Weekes* before overruling them, *see id.* at 743-47 & n.17, all before this Court's decisions in *Wilander* and *Chandris*.

The decision below also erred in concluding that stevedores and longshoremen, despite not being "seamen," are covered by the residual clause. *See* Pet. App. 14a. That construction renders "seamen" meaningless. "Had Congress intended [the residual clause] to be interpreted so generally as to capture [anyone with a close connection to a vessel], Congress would have had no reason to refer specifically to [seamen]." *Yates*, 574 U.S. at 546 (plurality); *id.* at 551 (Alito, J., concurring in the judgment).

B. Speculation that Congress intended to give § 1 a broad reach undermines the text and attributes illogical motives to Congress.

Saxon may renew her argument that § 1 must be read broadly to ensure "that Congress (and the executive branch) retain[] the ability to regulate and resolve disputes in the transportation industry, unhampered by any effort by an employer to substitute its own individualized dispute resolution process." Opp. 8. That argument lacks merit. To be sure, *Circuit City* stated that it is "reasonable to assume 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." 532 U.S. at 121. But Saxon's argument is based on the

mistaken premise that Congress intended to create a broad exception. The opposite is true.

First, Saxon's purposive argument disregards the textual indicia and this Court's unequivocal holding that the § 1 exemption must be construed narrowly. *See supra* pp. 15-16. Contrary to Saxon's assertion, § 1 does not reflect a congressional desire to regulate employment disputes in "the transportation industry" writ large. Opp. 8. Instead, the phrase "engaged in commerce," the words "seamen" and "railroad employees," and the statute's "proarbitration purposes" "compel that the § 1 exclusion provision be afforded a narrow construction." *Circuit City*, 532 U.S. at 118.

Second, even assuming Congress wanted to cover "all transportation workers[]," Opp. 8, the question stands: who are transportation workers? The answer lies in the text, not Saxon's purposive argument. And the text does not suggest that Congress intended to create a broad exemption through narrow language.

The most Saxon can say is that Congress could not have known just what "statutory dispute resolution schemes" it might later "develop[]." *Circuit City*, 532 U.S. at 121. If that's true, it just means that Congress likely was not crafting the § 1 exemption based only on existing legislation. It does not follow, however, that § 1 must be read broadly to avoid tying Congress' hands. If Congress wants to create a new federal arbitration scheme for workers who (like Saxon) have arbitration agreements already covered by the FAA, all Congress has to do is declare that the FAA does not apply to those contracts. There is thus no need to stretch the plain meaning of § 1 to save a power Congress already has. Saxon's speculation also is illogical. Would Congress really compromise the FAA's

proarbitration purpose by exempting a broad swath of workers based solely on the *possibility* that federal law might one day fill the void? Unsurprisingly, there is no textual hook for such an implausible reading.

Saxon's focus on then-existing legislation also doesn't support construing § 1 broadly. The Shipping Commissioners Act supports a *narrow* construction. The statute reached a subset of seamen—an already narrow class of sea-based workers, *Chandris*, 515 U.S. at 359—working on ships bound to and from foreign ports or going to and from Pacific or Atlantic ports. *See* 17 Stat. at 264, § 12. If anything, the statute supports narrowly construing § 1 to reach only transportation workers who cross borders.

The Transportation Act of 1920 is even less helpful to Saxon. As *Circuit City* understood it, Congress was imminently planning to scrap that statute. *See* 532 U.S. at 121. Before Congress enacted the FAA, there was widespread dissatisfaction with the Transportation Act and the railroads and unions were in talks to come up with a replacement. *See Texas & New Orleans R.R. v. Brotherhood of Ry. & S.S. Clerks*, 281 U.S. 548, 562-63 (1930). In other words, nobody knew just what the new legislation would say. Indeed, railroad unions and management were still hammering out the framework for the RLA in late 1925, many months after Congress enacted the FAA in February 1925. *See Railway Emps. Dep't v. Hanson*, 351 U.S. 225, 240-41 (1956) (Frankfurter, J., concurring). Neither the Transportation Act nor the RLA should inform the meaning of the FAA.

Finally, even if the later-enacted RLA could somehow inform the earlier-enacted FAA, there is no reason to think that § 1 of the FAA must be construed

expansively just to ensure that it doesn't overlap with the RLA. The types of disputes an employer and employee might agree to arbitrate, on the one hand, and the types of disputes subject to mandatory RLA arbitration, on the other, have little overlap.

As originally enacted, the RLA provided procedures for major collective-bargaining issues; it required carriers and their employees to try "to make and maintain agreements concerning rates of pay, rules, and working conditions." 44 Stat. 577, 577 § 2 (1926). In 1934, Congress amended the RLA to specify dispute-resolution procedures for so-called "major disputes" and "minor disputes." *Elgin, Joliet & E. Ry. v. Burley*, 325 U.S. 711, 724 (1945) (discussing RLA's evolution). "Major disputes" involve efforts to collectively bargain for new rights, wages, or working disputes, *Consolidated Rail Corp. v. Railway Lab. Execs. Ass'n*, 491 U.S. 299, 302 (1989), while minor disputes involve interpretations of existing collective-bargaining agreements, *Elgin*, 325 U.S. at 723; *see generally Norris*, 512 U.S. at 252-53.

Neither major nor minor disputes are likely to overlap with the types of disputes covered by arbitration agreements subject to the FAA. Major disputes (the focus of the RLA as originally enacted) are not the kind of thing that FAA-covered arbitration agreements would address, because they are disputes about reaching an agreement in the first place. And while minor disputes are subject to compulsory arbitration before a review board, *Consolidated Rail*, 491 U.S. at 303-04 & n.4, their scope is limited. Minor disputes are only those disagreements "that involve duties and rights created or defined by the CBA," such that "the dispute may be conclusively resolved by interpreting the existing [CBA]." *Norris*, 512 U.S. at 256, 258

(citation omitted). The RLA thus does not preempt "substantive protections extended by" state law or federal law—*i.e.*, "causes of action to enforce rights that are independent of the CBA." *Id.* at 256; *see id.* at 258-59 (discussing *Buell*, 480 U.S. at 564-65 (RLA doesn't displace FELA cause of action)). In any event, the RLA applies only when employees are subject to a CBA. Saxon is not. Pet. App. 3a.

Guesswork about congressional purpose is no way to construe a statute. This case is no exception.

* * *

Neither the court of appeals' reasoning nor Saxon's arguments for construing § 1 broadly withstand scrutiny. They offer the Court no reason to depart from *Circuit City*'s instruction to read § 1 narrowly using ordinary tools of statutory interpretation.

CONCLUSION

The Court should reverse the Seventh Circuit's judgment and hold that Saxon is not exempt from the FAA because she is not a seaman, railroad employee, or member of "any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

Respectfully submitted.

Melissa A. Siebert
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Dr., Ste. 4700
Chicago, IL 60606

Scott A. Chesin
SHOOK, HARDY & BACON L.L.P.
New York, NY 10019

*Admitted in Ohio and California; supervised by DC Bar members while DC application is pending

Shay Dvoretzky
Counsel of Record
Parker Rider-Longmaid
Kyser Blakely*
Hanaa Khan
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Ave. NW
Washington, DC 20005
202-371-7000
shay.dvoretzky@skadden.com

Raza Rasheed
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Ave.
Los Angeles, CA 90071

Counsel for Petitioner

January 24, 2022