No. 21-309

IN THE

Supreme Court of the United States

SOUTHWEST AIRLINES CO.

Petitioner,

v.

LATRICE SAXON

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF AMICUS CURIAE LYFT, INC. IN SUPPORT OF PETITIONER

ROHIT K. SINGLA
MUNGER, TOLLES & OLSON LLP
560 Mission Street
San Francisco, CA 94105
(415) 512-4032

DONALD B. VERRILLI, JR.
ELAINE J. GOLDENBERG
Counsel of Record
RACHEL G. MILLER-ZIEGLER
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave, NW
Suite 500 East
Washington, DC 20001
(202) 220-1104
Elaine.Goldenberg@mto.com

Counsel for Amicus Curiae *Lyft, Inc.*

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INTEREST OF *AMICUS CURIAE*[1]

Lyft, Inc. (Lyft) is a technology company that offers a software platform enabling people seeking rides to connect with drivers seeking to provide local transportation. Drivers using the Lyft platform currently provide such transportation to riders in every state in the country. Most drivers using the Lyft platform have agreed to submit disputes (if any) with Lyft to individual arbitration. Nonetheless, some drivers who have agreed to arbitration subsequently have sought to litigate disputes with Lyft in court, arguing that their arbitration agreements are not binding under the exception to the Federal Arbitration Act (FAA) set forth in 9 U.S.C. 1 for classes of workers "engaged in * * * interstate commerce." Lyft therefore has a substantial interest in this Court's interpretation of the scope of the Section 1 exemption.

[1] Counsel for all parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

Section 1 of Title 9 of the U.S. Code provides that the FAA does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The lower courts have developed a robust, pro-arbitration consensus about a number of important Section 1-related issues that are implicated by this case but are not the focus of the parties' analysis here. In deciding this case, *amicus* Lyft respectfully submits that this Court should take care not to inadvertently cast doubt on that consensus or otherwise create confusion as to the scope of the Section 1 exemption.

First, Section 1's text demands an inquiry into whether a "class" of workers is engaged in interstate commerce. 9 U.S.C. 1. Adhering to that text, the lower courts that have addressed the question have concluded that deciding whether the Section 1 exemption applies calls for examination of the activities of a defined, nationwide class of workers—not the activities of an individual plaintiff or some more limited or malleable class. That analysis is highly significant to the outcome in many Section 1 cases. Accordingly, this Court should take care to frame its ruling in this case, as Section 1 requires, around the activities of the nationwide class of workers to which plaintiff belongs.

Second, Lyft agrees with petitioner's argument that, in light of the specific language of Section 1 and the FAA's purposes, a class of workers cannot be "engaged in foreign or interstate commerce" under Section 1 without ever crossing national or state borders. That interpretation of Section 1 dictates a ruling in petitioner's favor, because no airplane cargo loader crosses a border while loading or unloading cargo from an airplane. If this Court agrees, the Court should not

inadvertently suggest in the course of ruling for petitioner that it is sufficient to trigger the exemption that only some members of the class sometimes cross a border in carrying out their work. Although this case appears to involve a class that acts uniformly with respect to the crossing of borders, many cases do not. This Court should not permit stray language in its decision to disrupt the lower courts' pro-arbitration consensus that the Section 1 exemption is not applicable when only a small portion of a class's work involves crossing national or state lines. For a "class" to be engaged in an activity, that activity must be a central part of the class's work—not something incidental done by a subset of the class.

Third, if this Court were to conclude that certain kinds of intrastate activity can amount to the kind of "engage[ment]" described in Section 1, the Court should be careful not to include language in its decision that disturbs important principles, reflected in over a hundred years of precedent, governing when purely intrastate activities can qualify as engagement in foreign or interstate commerce. To begin, the Court should not disturb its longstanding distinction between workers who merely facilitate or support transportation without undertaking it themselves (like the airplane cargo loaders here) and workers who actually transport people or things from place to place. Because this case deals with the former category of workers, the Court should make clear that a decision in favor of respondent would not carry over to workers who do provide transportation. Additionally, because not every class of workers who have some connection with foreign or interstate travel is engaged in foreign or interstate commerce, the Court should carefully preserve the longstanding distinction between two differ-

ent kinds of intrastate work: (a) intrastate transportation work that is *integrated with* an international or interstate trip, which is work that has been held to be part of foreign or interstate commerce; and (b) intrastate transportation work that is essentially local in nature and merely happens to touch on a hub for cross-border transport, which is work that is *not* part of foreign or interstate commerce. That distinction appears in case after case decided by this Court, and has been applied by the lower courts on many occasions to conclude that certain classes of workers (like rideshare drivers) are not covered by Section 1 and so are required to abide by their arbitration agreements. Finally, here again the Court should guard against any analysis that is focused on intrastate work performed by a particular plaintiff or portion of a class; whatever the nature of the work the Court deems to be "engage[ment] in foreign or interstate commerce," 9 U.S.C. 1, the Section 1 analysis should always remain focused on the work of a nationwide class as a whole.

ARGUMENT

I. This Court Should Make Clear That Deciding Whether The Section 1 Exemption Applies Requires Analysis Of A Nationwide Class Of Workers

In deciding this case, the Court should analyze whether the relevant class of workers, as a class, is engaged in interstate commerce. This case comes to the Court on the premise that the relevant class is "[a]irplane cargo loaders" and that respondent performs similar activities as other members of that class. See Pet. App. 2a, 9a-10a; Pet. i. If the Court were to frame its analysis in terms of whether respondent herself is engaged in interstate commerce, or whether some particular portion of a class to which respondent belongs

(such as airplane cargo loaders in Chicago or in Illinois) is so engaged, then the Court's opinion would fail to conform with Section 1's text and could cause substantial confusion in the lower courts.

The Section 1 residual clause covers only "any other *class* of workers engaged in * * * interstate commerce." 9 U.S.C. 1 (emphasis added). Section 1 thus does not ask whether any individual plaintiff is personally engaged in interstate commerce, or whether some group of workers who do not constitute a full "class" is so engaged. Rather, as the courts of appeals have consistently held, Section 1 asks whether a "class" of transportation workers to which the plaintiff belongs is engaged in interstate commerce. *Ibid.*; see Pet. App. 5a (Section 1's text "obligates us to focus on the broader occupation, not the individual worker"); *Wallace* v. *Grubhub Holdings, Inc.*, 970 F.3d 798, 800 (7th Cir. 2020) (Barrett, J.) (under "text of the residual category * * * the operative unit is a 'class of workers'"); *Harper* v. *Amazon.com Servs., Inc.*, 12 F.4th 287, 293 (3d Cir. 2021); *Capriole* v. *Uber Techs., Inc.*, 7 F.4th 854, 861 (9th Cir. 2021); *Hamrick* v. *Partsfleet, LLC*, 1 F.4th 1337, 1351 n.3 (11th Cir. 2021).

The text of the FAA further dictates that the "class of workers" must be a defined, nationwide class of individuals. The residual clause covers "any *other* class" of workers, 9 U.S.C. 1 (emphasis added), thus referring back to the classes of "seamen" and "railroad employees" expressly identified earlier in the provision. The definition of a class must therefore "be controlled and defined by reference to th[ose] enumerated categories of workers," *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 115 (2001); see *United States* v. *Standard Brewery*, 251 U.S. 210, 218 (1920) (discussing meaning of "other" clause in a list)—and only a "class"

that extends across the country is consistent with the two nationwide classes that Congress named in Section 1.

Any other approach would be unworkable. Carving classes of workers up by state, region, or city would introduce considerable "complexity and uncertainty" to the analysis, *Circuit City*, 532 U.S. at 123; create anomalies based on, say, the fortuity of whether a plaintiff happened to work near a state border; and clash with the FAA's purpose of establishing a *national* rule requiring enforcement of arbitration agreements, see *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006) (noting "*national* policy favoring arbitration" (emphasis added)); *Salt Lake Trib. Publ'g Co., LLC* v. *Mgmt. Plan., Inc.*, 390 F.3d 684, 689 (10th Cir. 2004) ("Congress did not plainly intend arbitration to mean different things in different states. Rather, it sought a uniform federal policy favoring agreements to arbitrate.").

In addition, the relevant "class" for purposes of Section 1 cannot be defined solely by litigants' own assertions about who they think a class includes in a particular case. That would contravene Section 1's text: "seamen" and "railroad employees," which define the scope of the residual clause, are not subsets of workers specific to a particular litigation, but rather classes that exist independently of any given suit. And permitting litigants to gerrymander "class" definitions to manipulate Section 1's application would invite tremendous mischief. For example, a pizza delivery driver living in Alexandria, Virginia might argue that she belonged to a "Northern Virginia" class to focus on drivers who work near a state border, while a pizza delivery driver living in Rochester, New York might define her class as all "New York" delivery drivers so

as to sweep in New York City drivers who may sometimes cross into New Jersey or Connecticut. The application of the Section 1 exemption to the same kinds of workers should not differ based on such tactical choices.

It is unsurprising, then, that "all courts addressing this question * * * have rejected attempts to cabin their analyses to a specific geographic area," *Capriole*, 7 F.4th at 862, or to examine only the activities of a single plaintiff or a particular portion of a class. This Court should endorse the consensus reached by the courts below on the "class" nature of the analysis—and, in any event, should not inadvertently disturb that analysis in its opinion in this case.

Disturbing that analysis could have significant negative consequences. Even assuming that Section 1's command to undertake a class-based analysis is not highly significant here given the nature of the lower court's ruling and the content of the parties' arguments, that command is often important in other contexts, including in litigation involving rideshare drivers. See, *e.g.*, *Aleksanian* v. *Uber Techs. Inc.*, 524 F. Supp. 3d 251, 261 (S.D.N.Y. 2021) (rejecting effort to define class as "New York City Uber drivers" and instead analyzing whether "Uber drivers as a class engaged in interstate commerce"), *reconsideration denied*, 2021 WL 6137095 (S.D.N.Y. Dec. 29, 2021). For instance, even if a rideshare driver living in D.C. might provide trips across state borders, most rideshare drivers do not do so. In a suit brought by a D.C. rideshare driver, the Section 1 inquiry would look different if the question was whether the plaintiff is

engaged in interstate commerce rather than—as Section 1's text requires—whether the class to which she belongs is so engaged. See *ibid.*[2]

II. This Court Should Rule That Crossing National Or State Borders Is A Necessary Condition For Application Of The Residual Clause, But Should Take Care In Doing So Not To Suggest That Section 1 Applies Wherever Any Portion Of A Class Crosses National Or State Lines

A. Crossing Borders Is Necessary For The Section 1 Exemption To Apply

The court of appeals erred in holding that loading and unloading airplane cargo at a single site within a single state constitutes "engage[ment] in foreign or interstate commerce" under Section 1. As petitioner contends (Pet. Br. 14-35), a class of workers that does not provide physical transportation across national or state lines, and therefore does not carry out work in the very "channels" of foreign or interstate commerce, *id.* at 15, cannot be deemed to be "engaged in" such commerce within the meaning of Section 1.

That conclusion flows from the specific text of Section 1 and from the purposes of the FAA. See *Circuit*

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[2] In addition, although the parties here have framed the Section 1 exemption as applicable to the transportation of "goods or people," *e.g.*, Pet. Br. 1, in *amicus*'s view the Section 1 exemption can apply only to those classes of workers devoted to transporting *goods*. See *Circuit City*, 532 U.S. at 112, 121 (discussing "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods"). Because (as the parties have argued it) this case does not present that issue, *amicus* submits that it would be appropriate to reserve the issue for later decision.

City, 532 U.S. at 118 (meaning of language in Section 1 must be decided "with reference to the statutory context in which it is found and in a manner consistent with the FAA's purpose," because "engaged in" commerce does not have "a uniform meaning whenever used by Congress" (citation omitted)). First, the Section 1 residual clause applies only to a class of workers "engaged in" foreign or interstate commerce, 9 U.S.C. 1, and dictionaries from the time of the FAA's enactment demonstrate that being "engaged" in commerce means being "occupied" or "employed" in transportation between different countries or states. See, *e.g.*, *Webster's Collegiate Dictionary* 333 (3d ed. 1919) (defining "engaged"); see also *New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 539 (2019) (interpreting terms in Section 1 by looking to their meaning in 1925). "Engaged in" is thus a far more limited phrase than the "more open-ended formulations 'affecting commerce' and 'involving commerce,'" *Circuit City*, 532 U.S. at 118, which Congress has chosen to use in other contexts. That more limited phrase is best understood to denote only *direct* work by a class of workers in actually moving articles of commerce from one state to another. See *Hamrick*, 1 F.4th at 1350; *Rittmann* v. *Amazon.com, Inc.*, 971 F.3d 904, 925-926 (9th Cir. 2020) (Bress, J., dissenting); see generally *Circuit City*, 532 U.S. at 118-119 (explaining that Section 1 exemption must be given "narrow construction" and "precise reading" in light of its language and FAA's purposes).

Second, the classes of "seamen" and "railroad employees" to which Section 1 refers, 9 U.S.C. 1, "commonly (if not prototypically) * * * operate across international and state boundaries." *Rittmann*, 971 F.3d at 927 (Bress, J., dissenting). Indeed, in 1925, those industries were the main means of moving goods

long distances, which required traveling across national and state lines. See *Hamrick*, 1 F.4th at 1351; *Rittmann*, 971 F.3d at 927 (Bress, J., dissenting). Because the residual clause is "controlled and defined by reference to" seamen and railroad employees, *Circuit City*, 532 U.S. at 115, the residual clause must likewise be understood to cover only classes of workers who, as a class, work to provide transportation across borders. See *ibid.*

B. The Court Should Take Care Not To Suggest That The Section 1 Exemption Is Applicable If Only A Small Portion Of A Class's Work, Carried Out By A Subset Of Class Members, Involves Crossing National Or State Lines

In this case, it is undisputed that no member of the class of workers to which respondent belongs crosses national or state lines as part of his or her work. Accordingly, it is impossible that the class itself is engaged in interstate commerce within the meaning of Section 1. That is enough to resolve this case in petitioner's favor.

Assuming that this Court agrees and reverses the court of appeals on that basis, the Court should take care not to suggest that the *inverse* proposition is true—that is, that *any* crossing of borders is sufficient to trigger the Section 1 exemption, such that the exemption applies so long as some above-zero percentage of the class's work involves crossing national or state lines. It is not hard to imagine inadvertently broad language in an opinion ruling for petitioner that suggests such a proposition, since this case does not require the Court to address a situation in which all members of a class do not carry out exactly the same work in the same manner at all times. But such stray

language could do real damage by significantly disrupting a pro-arbitration, near-consensus conclusion reached by the lower courts: the fact that a small portion of the work carried out by a class crosses national or state lines does not make the Section 1 exemption applicable, either to the particular workers who cross those lines or to any other class member.

1. As to some classes, some workers in the class will cross state lines on some occasions while other workers in the same class will never cross state lines. Lower courts confronting that situation have concluded that, for the "class" to be said to be engaged in interstate commerce, interstate transportation must be a common or central part of the class's work, not something that only a subset of the class does on an incidental basis based on a happenstance of geography. As then-Judge Barrett put it in *Wallace* v. *Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020), workers do not come within the scope of the Section 1 exemption unless they can "demonstrate that the interstate movement of goods is a central part of the job description of the class of workers to which they belong." *Id.* at 803; see *Hamrick*, 1 F.4th at 1352 (directing "district court to determine * * * whether, *in the main*, the class actually engages in interstate commerce" (emphasis added)). For instance, nobody would say that pizza delivery drivers are a class of workers engaged in driving orange cars; some drivers probably drive such cars, but that is not a characteristic that the class widely shares or a central part of the class's job description. Those *members* are "engaged in" driving that kind of car, but the "class" itself is not.[3]

[3] That does not mean that the residual clause applies only if *every* worker in a class always engages in interstate commerce. So long

2. Cases involving rideshare drivers provide a concrete example of how that reasoning has been applied in the lower courts. In the rideshare context, courts have widely rejected the argument that rideshare drivers, as a nationwide class, fall within the Section 1 exemption simply because a small percentage of trips cross state lines. See, *e.g.*, *Capriole*, 7 F.4th at 865; *Cunningham* v. *Lyft, Inc.*, 17 F.4th 244, 252-253 (1st Cir. 2021); *In re Grice*, 974 F.3d 950, 957 (9th Cir. 2020).[4] Rideshare drivers take passengers between points generally within the same city or region and therefore almost never cross state lines. In Lyft's case, over 98% of all rides that drivers using the Lyft platform provide in the United States remain within the same state. See *Cunningham*, 17 F.4th at 248. Data from Uber is very similar. See *Capriole*, 7 F.4th at 864 (only 2.5% of trips between 2015 and 2019 were interstate).

To be sure, some drivers "who live close to state borders, especially on the East Coast," do take riders

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as a class "in the main" engages in interstate commerce, it is natural to say that the "class" does so, even if a few members do not. See *Hamrick*, 1 F.4th at 1351 n.3.

[4] See also, *e.g.*, *Singh* v. *Uber Techs., Inc.*, 2021 WL 5494439, at *10-12 (D.N.J. Nov. 23, 2021), *appeals docketed*, Nos. 21-3234, 21-3363 (3d Cir. Dec. 6, 28, 2021); *Davarci* v. *Uber Techs., Inc.*, 2021 WL 3721374, at *11-12 (S.D.N.Y. Aug. 20, 2021); *Osvatics* v. *Lyft, Inc.*, 535 F. Supp. 3d 1, 17-18 (D.D.C. 2021); *Aleksanian*, 524 F. Supp. 3d at 261; *Hinson* v. *Lyft, Inc.*, 522 F. Supp. 3d 1254, 1259-1262 (N.D. Ga. 2021); *Rogers* v. *Lyft, Inc.*, 452 F. Supp. 3d 904, 916 (N.D. Cal. 2020), *appeal docketed*, No. 20-15689 (9th Cir. Apr. 16, 2020). Only two district court decisions "have bucked this trend"; those incorrect decisions "specifically noted that further evidence may compel the majority view," *Singh*, 2021 WL 5494439, at *8, *14 n.8; and they compelled arbitration on grounds other than the FAA in any event.

across state lines on some occasions. *Capriole*, 7 F.4th at 864. But courts have correctly concluded that such sporadic and incidental interstate activity on the part of a subset of class members is not enough for the "class" itself to be "engaged in * * * interstate commerce." 9 U.S.C. 1. Those interstate rides "occur by happenstance of geography," and they therefore do not "alter the intrastate transportation function performed by the class of workers." *Capriole*, 7 F.4th at 864 (citation omitted); *accord Hill* v. *Rent-A-Center, Inc.*, 398 F.3d 1286, 1289-1290 (11th Cir. 2005) (Section 1 does not cover "incidental" interstate transportation). Providing transportation across state lines is not a common characteristic of rideshare drivers or central to what those drivers do. That some drivers sometimes provide that kind of transportation therefore does not bring the class (or those drivers) within the Section 1 exemption.

As courts have observed, were incidental interstate trips by drivers near state borders sufficient to constitute engagement in interstate commerce under Section 1, then taxi drivers, ice cream truck drivers, pizza-delivery drivers, and virtually all other local transportation workers would be swept into the Section 1 exemption, even if the vast majority of such workers never cross state lines. That would "stretch[]" the exemption "past the breaking point," *Adkins* v. *Labor Ready, Inc.*, 303 F.3d 496, 505-506 (4th Cir. 2002), making it capacious and sprawling where Congress intended it to be "narrow" and "precise," *Circuit City*, 532 U.S. at 118-119.

Those decisions correctly adhere to the text of Section 1 and the "liberal federal policy favoring arbitration" codified in the FAA. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011) (citation omitted).

This Court should take care to avoid disturbing them when it issues its decision in this case. Accordingly, the Court should make clear that, while it is *necessary* for the Section 1 exemption to apply that at least some members of the class cross borders in the course of their work, it is not *sufficient* to trigger the exemption that only some members of the class do so. Because the analysis must be carried out on a class basis, see pp. 4-8, *supra*, it is the *class*, not specific workers in the class, that is relevant—and the Section 1 exemption applies only where "the interstate movement of goods is a central part of the job description of the *class* of workers." *Wallace*, 970 F.3d 798, 803 (emphasis added).

III. If The Court Concludes That Crossing Of National Or State Lines Is Not Required For The Section 1 Residual Clause To Apply, The Court Should Make Clear That Not Every Class Of Workers That Is Arguably Linked To A Larger Foreign Or Interstate Journey Is Covered By The Exemption

As explained above, the specific text and purposes of the FAA dictate that the exemption in the Section 1 residual clause applies only if crossing of national or state borders takes place. The plain text of the FAA of course has primacy in the interpretation of the Section 1 exemption. See *Circuit City*, 532 U.S. at 118.

But if this Court were to disagree that crossing foreign or state borders is necessary for the Section 1 exemption to apply and to conclude instead that certain intrastate activity is sufficient to amount to engagement in foreign or interstate commerce, the Court could look to precedent interpreting what it means to be "engaged in" foreign or interstate commerce outside

of the FAA context. Regardless of whether the Court rules for or against petitioner under that analysis (and particularly if the Court were to rule against petitioner), the Court should take care that its decision does not disturb several important principles, laid down in more than a century of that precedent, governing when purely intrastate activities can qualify as engagement in interstate commerce.

A. The Court Should Not Disturb The Distinction Between Workers Who Actually Provide Transportation And Those Who Merely Support Or Facilitate Transportation

This Court should not blur the distinction in the law between classes of workers who actually provide transportation—*i.e.*, those who move goods from one location to another—and classes of workers who merely support or facilitate transportation. Airplane cargo loaders fall into the latter category. Accordingly, a decision concluding that a class of those loaders falls within the Section 1 exemption even though the loaders do not cross any borders does not necessarily bear on the separate question of whether workers who provide intrastate *transportation* fall within the exemption.

This Court has long employed a particular and distinct mode of analysis for assessing whether workers who support or facilitate transportation, but do not themselves actually move in space in the act of transporting something, are engaged in interstate commerce. That mode of analysis is well illustrated by *Shanks* v. *Delaware, Lackwanna & Western Railroad Co.*, 239 U.S. 556 (1916), which considered whether a worker injured while working at a railcar repair shop

was engaged in interstate commerce within the meaning of the Federal Employers Liability Act (FELA).[5] At the time *Shanks* was decided, FELA stated that a railroad "engaging in" interstate or foreign commerce "shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." 35 Stat. 65, 65 (1908); see *Shanks*, 239 U.S. at 557. *Shanks* held that a railroad worker is engaged in interstate commerce within the meaning of FELA at the time he sustains an injury if (1) he was actually transporting goods interstate, or (2) he was working on tasks "so closely related to" interstate transportation "as to be practically a part of it." 239 U.S. at 558. The worker at issue in *Shanks* obviously could not demonstrate the former. Nor could he demonstrate the latter, since his work involved only rearranging equipment. See *id.* at 560.

Other decisions of this Court from the years leading up to the FAA's enactment in 1925 are to the same effect. See, e.*g.*, *S. Pac. Co.* v. *Indus. Accident Comm'n of Cal.*, 251 U.S. 259, 263 (1920); *Pederson* v. *Delaware, Lackawanna & W. R.R. Co.*, 229 U.S. 146, 151

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[5] Petitioner contends that decisions interpreting constitutional provisions or FELA are of limited relevance in interpreting the FAA. See Pet. Br. 36-44. *Amicus* agrees with petitioner that the FAA's text and this Court's decisions interpreting the FAA compel the conclusion that the residual clause does not apply unless the class crosses national or state borders. See pp. 8-10, *supra*. To the extent that this Court looks beyond FAA case law, case law from other contexts—much of it from before the FAA's enactment—dictates a narrow reading of the language in Section 1 referring to "engage[ment] in foreign or interstate commerce." 9 U.S.C. 1; see generally *Circuit City*, 532 U.S. at 118.

(1913). And this Court "steadily adhered to" a separate analysis of work closely related to transportation (on one hand) and transportation itself (on the other). *Chicago & N.W. Ry. Co.* v. *Bolle*, 284 U.S. 74, 79 (1931).[6]

Given that distinction in analysis, decisions about workers who do not transport anything are not especially instructive in cases involving workers who do move things from place to place. Courts addressing Section 1 of the FAA have accordingly cabined their decisions to whichever context is the apt one in a particular case. For instance, in a First Circuit decision involving the application of Section 1 to "Amazon Flex" workers, who transport packages intrastate from a warehouse to a consumer's door, the court of appeals went out of its way to explain that its reasoning applied only to workers who actually transport something. Citing *Shanks*, it reserved the separate question of how the exemption would apply (if at all) to workers whose tasks are merely intertwined in some way with transportation. See *Waithaka* v. *Amazon.com, Inc.*, 966 F.3d 10, 22 n.10 (1st Cir. 2020); see also *id*. at 20 (explaining that "precedents pertaining to the narrower category of workers who were themselves transporting goods * * * are most relevant for our purpose" and declining to rely on cases involving non-transportation workers). The court below took the same approach in this case. See, *e.g.*, Pet. App. 17a

[6] In 1939, Congress broadened the circumstances under which railroad workers are eligible for FELA compensation, so that there was no longer any need for such a separate analysis under that statute. See *S. Pac. Co.* v. *Gileo*, 351 U.S. 493, 498 (1956) (describing the change in statutory language).

(putting workers who provide transportation in separate "category" from those who perform work "so closely related to interstate transportation as to be practically a part of it" (alteration adopted; citation omitted)).

If this Court concludes that Section 1 applies to workers who do not actually cross state lines and rules that airplane cargo loaders fall within the scope of Section 1, then the Court should draw a similar line. The Court could do so simply by clarifying that its analysis arises in the specific context of workers who are not actually carrying out any transportation and should not be understood to govern any class of workers that does transport things or people to a different location.

B. The Court Should Leave In Place The Distinction Between Two Kinds Of Intrastate Work That Precede Or Follow International Or Interstate Travel

Regardless of whether the Court draws a line between workers supporting or facilitating transportation (like airplane cargo loaders) and workers *providing* transportation, and regardless of how the Court rules with respect to whether airplane cargo loaders are exempt from the FAA, the Court should make clear that not all work that touches on foreign or interstate transport constitutes "engage[ment] in" foreign or interstate commerce under the Section 1 exemption. The key distinction in that regard already exists in this Court's case law, which draws a line between (a) intrastate transportation work that is *integrated with* an international or interstate trip, which is work that has been held to be part of foreign or interstate commerce; and (b) intrastate transportation work that is essentially local in nature and merely happens to

touch on a hub for foreign or interstate transport, which is work that is not part of foreign or interstate commerce.

Even if the Court were to decide that airplane cargo loaders' work is "engage[ment] in foreign or interstate commerce" because it has a sufficiently integrated relationship with a foreign or interstate trip that is to follow the loading, the Court should not suggest that *any* worker who has *any* involvement with goods or passengers about to take such a trip (or having recently completed such a trip) is subject to the Section 1 exemption. Such a suggestion could inadvertently introduce confusion into a large, consistent body of pro-arbitration case law—including law concluding that rideshare drivers do not fall within the scope of the exemption simply because they provide trips to and from airports.

1. The distinction between local work that is part of an integrated interstate trip and local work that is not part of such a trip is clearly illustrated by this Court's decision in *United States* v. *Yellow Cab Co.*, 332 U.S. 218 (1947), *overruled on other grounds by Copperweld Corp.* v. *Indep. Tube Corp.*, 467 U.S. 752 (1984). In *Yellow Cab*, a Sherman Act case, the Court considered whether transportation by taxicab to and from railroad stations in Chicago—a hub for interstate rail travel—constituted movement in interstate commerce.[7] The Court distinguished between two kinds of in-state taxi trips that rail passengers might make.

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[7] The Sherman Act is broadly construed. See *Yellow Cab*, 332 U.S. at 226. If a certain class of workers is not engaged in interstate commerce under the Sherman Act's broad construction, the class surely cannot be so engaged under the FAA's narrow one.

Some railroads that transported passengers on an interstate trip that required changing train stations in Chicago arranged and contracted in advance for passengers' transportation by taxi between the stations, rather than leaving passengers to find their own transit between the stations on arrival. See 332 U.S. at 228. The Court concluded that such a taxi ride was best considered a portion of the interstate railway journey—"an integral step in the interstate movement" and therefore "part of the stream of interstate commerce." *Id.* at 228-229.

But the Court reached the opposite conclusion as to situations in which passengers hailed their own cabs "to transport themselves and their luggage" to or from railroad stations as the first or last leg of an interstate journey. See 332 U.S. at 230. The transportation that cab companies independently provided to those passengers, the Court explained, was "too unrelated to interstate commerce to constitute a part thereof." *Ibid.*; see *id.* at 233. The Court observed that "[t]he traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs, or various other means of conveyance." *Id.* at 231-232. And if the traveler does choose to use a taxi, "[i]t is contracted" for "independently of the railroad journey and may be utilized whenever the traveler so desires." *Ibid.* Thus, "[f]rom the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey. To the taxicab driver, it is just another local fare." *Ibid.* Accordingly, the Court ruled, such a taxi ride to or from a railroad station "is not a constituent part of the interstate movement"; the

cab's "relationship to interstate transit is only casual and incidental." *Ibid.*

This Court has applied that same distinction in case after case assessing, in many legal contexts, whether intrastate economic activity should be understood to constitute participation in interstate commerce. Many of the decisions date to shortly before or shortly after enactment of the FAA in 1925. For instance, *Moore* v. *New York Cotton Exchange*, 270 U.S. 593 (1926), another Sherman Act case, found that local conduct not integrated with interstate transport did not constitute interstate commerce, even though it had some dependence on the existence of such commerce. *Moore* involved a cotton exchange organization whose members engaged in business only within New York, but whose cotton came from a port that received its shipments from out of state. *Id.* at 603-604. The Court ruled that the cotton exchange was a "purely local" business, explaining that, "[i]f interstate shipments are actually made, it is not because of any contractual obligation to that effect; but it is a chance happening which cannot have the effect of converting these purely local agreements or the transactions to which they relate into subjects of interstate commerce." *Id.* at 604; see *ibid.* (stating that it is "not enough" that the cotton "agreements are likely to give rise to interstate shipments").

Similarly, in *McCluskey* v. *Marysville & Northern Railway Co.*, 243 U.S. 36 (1917), a FELA case, this Court said that a railroad was not engaged in interstate commerce for purposes of FELA when it engaged in intrastate transport of goods to a transit hub from which they were often moved out of state. See p. 16,

supra (setting forth FELA statutory language that existed at the time). As the Court explained, the railroad "had no concern with the subsequent disposition" of the goods and was "under no obligation to deliver them to another carrier." 243 U.S. at 39-40. Rather, whether the goods "were going outside of the state, depended upon chance or the exigencies of trade." *Ibid.*

McCluskey stands in sharp contrast to a different FELA case from 1920: *Philadelphia & Reading Railway Co.* v. *Hancock*, 253 U.S. 284 (1920), which deemed FELA's interstate-commerce requirement satisfied where the goods on a train car moving intrastate were already on an integrated journey out of the state. As the Court explained, "[t]here was no interruption of the movement; it always continued towards points as originally intended." *Id.* at 286. The Court emphasized that "[t]he determining circumstance is that the shipment was but a step in the transportation of the coal to real and ultimate destinations in another state" that had already been arranged for by the railroad itself before the intrastate portion of the goods' journey. *Ibid.*

The Court also ruled in 1904, building on earlier decisions, that there was no burden on interstate commerce created by a state tax applicable to a railroad-run cab service that transported passengers to and from the railway's ferry terminal, which was an interstate transit hub. See *New York ex rel. Pennsylvania Railroad Co.* v. *Knight*, 192 U.S. 21, 25 (1904); Pet. Br. 21, 33 (discussing that decision). The company argued that the state was improperly regulating interstate commerce because the "cab service is merely an extension, and therefore a part of, [the company's] interstate transportation." *Knight*, 192 U.S. at 25. The

Court rejected that contention, concluding instead that "the cab service is an independent local service, preliminary or subsequent to any interstate transportation." *Id.* at 28. The Court relied on the fact that the cab portion of the journey was "contracted and paid for independently of any contract or payment for strictly interstate transportation" and otherwise had "no contractual or necessary relation to interstate transportation." *Id.* at 26-27; see, *e.g.*, *Coe* v. *Town of Errol*, 116 U.S. 517, 525-528 (1886); *Chicago, Milwaukee, & St. Paul Ry., Co.* v. *Iowa*, 233 U.S. 334, 340-342 (1914).[8]

2. In interpreting the Section 1 exemption, the lower courts that have concluded that the exemption can cover purely intrastate work have applied the distinction described above to assess whether classes of workers providing intrastate transport are "engaged in foreign or interstate commerce." 9 U.S.C. 1. Again, the rideshare context provides a clear example of how that distinction has worked in practice.

Both the First and Ninth Circuits have concluded that the class of rideshare drivers is not within the scope of the Section 1 exemption merely because rideshare drivers sometimes pick up or drop off passengers at airports and those passengers may be traveling or have traveled across borders on their plane journeys. See *Cunningham*, 17 F.4th at 253; *Capriole*,

[8] Other decisions to similar effect, some arising in yet other contexts, are legion. See, *e.g.*, *S. Pac. Co.* v. *Arizona*, 249 U.S. 472, 476-477 (1919); *Baltimore & Ohio S.W. R.R. Co.* v. *Settle*, 260 U.S. 166, 173 (1922); *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 568-570 (1943); *Higgins* v. *Carr Bros. Co.*, 317 U.S. 572, 573-574 (1943).

7 F.4th at 865.[9] As the Ninth Circuit explained, "even when transporting passengers to and from transportation hubs as part of a larger foreign or interstate trip, [rideshare] drivers are unaffiliated, independent participants in the passenger's overall trip, rather than an integral part of a single, unbroken stream of interstate commerce." *Capriole*, 7 F.4th at 867. After all, a rider making the first or last leg of a journey through an airport has "complete freedom to arrive at or leave" the airport through use of a rideshare platform or any other means of transportation. *Yellow Cab*, 332 U.S. at 232. If she chooses to take a rideshare ride, she does so "independently," and the airline makes no arrangement with the rideshare company or the driver for that passenger to take a particular trip by car. *Ibid.* Her trip using a rideshare ride may be separated in time from her airplane ride. And whether a rider goes to an airport or any other location, from a driver's perspective, "it is just another local fare." *Ibid.*

In concluding that Section 1 does not cover rideshare drivers, both courts of appeals contrasted the class of rideshare drivers with a class of Amazon Flex drivers, who make intrastate trips to bring customers Amazon packages that originated out of state. In the view of both courts, Amazon Flex drivers are engaged in interstate commerce, and therefore covered by the Section 1 exemption, because they are part of a larger, integrated interstate trip coordinated entirely by Amazon. See *Cunningham*, 17 F.4th at 251; see

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[9] See also, *e.g.*, *In re Grice*, 974 F.3d at 958; *Singh*, 2021 WL 5494439, at *13-14; *Davarci*, 2021 WL 3721374, at *13-14; *Osvatics*, 535 F. Supp. 3d at 19-20; *Aleksanian*, 524 F. Supp. 3d at 262; *Hinson*, 522 F. Supp. 3d at 1262; *Rogers*, 452 F. Supp. 3d at 916.

also *Rittmann*, 971 F.3d at 916 ("interstate transactions between Amazon and the customer do not conclude until the packages reach their intended destinations" and Amazon Flex drivers' intrastate trips are "part of a continuous interstate transportation"); *Waithaka*, 966 F.3d at 26 (similar).

This Court should not take any steps in this case that could muddle that existing distinction—by, for example, stating in overly sweeping terms in the course of ruling in favor of respondent that all classes of workers that have some linkage to a foreign or interstate trip are covered by Section 1. The distinction is deeply grounded in this Court's case law. See pp. 19-23, *supra*. And it is plainly sensible as a way of ensuring that Section 1 remains "narrow," *Circuit City*, 532 U.S. at 118—because a huge range of different types of workers, including elevator operators, local city bus drivers, subway drivers, and corner-store delivery people on bicycles have some attenuated connection to interstate journeys that the passengers or goods they carry may take or may have taken. Local bus drivers who never leave the limits of a single city cannot be thought to be engaged in interstate commerce within the meaning of Section 1 simply because some bus passengers may happen to be heading to the city airport for an international flight.

The distinction between integrated and non-integrated trips also makes sense in light of the FAA's particular purpose. The Section 1 exemption carves out categories of workers for which Congress had already enacted—or envisioned enacting in the future—specific dispute resolution systems, to avoid "unsettl[ing]" those systems. See *Circuit City*, 532 U.S. at 118, 121;

see also Pet. Br. 31-32. Congress enacted those systems for classes of workers, like railroad employees, as to whom a contractual dispute could have highly problematic effects on interstate commerce. But there is no reason to think that Congress would have any such concern regarding workers who are not part of an integrated interstate trip.

C. The Court Should Frame Any Holding That Intrastate Work Can Trigger The Section 1 Exemption Around Analysis Of A Nationwide Class

Finally, a class-based analysis is critical to any examination of whether intrastate activity is sufficient to constitute the requisite engagement in commerce under Section 1, just as such an analysis is critical to deciding whether a class of workers is engaged in foreign or interstate commerce by virtue of crossing borders. See pp. 4-8, 10-14, *supra*. Whatever intrastate activity this Court might deem sufficient to constitute that engagement, the analysis should always remain focused on the nationwide class as a whole. Thus, even if the Court concludes that certain intrastate activity qualifies as engagement in foreign or interstate commerce, the mere fact that a particular plaintiff has undertaken that activity cannot trigger the Section 1 exemption; nor can the fact that some small percentage of the class to which that plaintiff belongs has undertaken that activity. It is only if the qualifying activity is "a central part of the job description of the nationwide class of workers" of which the plaintiff is a member, *Wallace*, 970 F.3d at 803, that the Section 1 exemption becomes applicable.

CONCLUSION

This Court should reverse the judgment of the court of appeals and, regardless of the outcome of the case, refrain from casting doubt on the consensus view in the lower courts that rideshare drivers do not fall within the scope of the FAA's Section 1 exemption.

Respectfully submitted,

ROHIT K. SINGLA
MUNGER, TOLLES & OLSON LLP
560 Mission Street
San Francisco, CA 94105
(415) 512-4032

DONALD B. VERRILLI, JR.
ELAINE J. GOLDENBERG
Counsel of Record
RACHEL G. MILLER-ZIEGLER
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave, NW
Suite 500 East
Washington, DC 20001
(202) 220-1104
Elaine.Goldenberg@mto.com

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