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 UBER TECHNOLOGIES, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER SOUTHWEST AIRLINES CO.

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INTEREST OF AMICUS CURIAE*

Amicus curiae Uber Technologies, Inc. is a technology company that operates several multi-sided platforms to connect service providers with customers. Most relevant to this litigation, Uber operates a rideshare platform that serves as a digital marketplace connecting passengers in need of transportation with drivers providing transportation services. Drivers who use Uber's rideshare platform do so pursuant to an agreement that includes an arbitration provision, from which drivers may opt out.

In litigation against Uber, drivers using Uber's rideshare platform have resisted arbitration by invoking the exemption from the Federal Arbitration Act (the "FAA") for "class[es] of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The courts of appeals that have addressed the issue have uniformly concluded that such drivers do not qualify for the Section 1 exemption because those drivers do not belong to a class of transportation workers engaged in interstate commerce.

Uber urges the Court not to disturb the consensus view among the courts of appeals that a transportation worker is eligible for the Section 1 exemption to the FAA only if the interstate movement of goods or people is a central part of the class members' job description, and that incidental crossing of interstate

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* Pursuant to Supreme Court Rule 37.6, counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party, or any other person other than amicus curiae or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented in writing to the filing of this brief.

lines or interaction with goods or people previously moved in interstate commerce is not sufficient.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1 of the FAA exempts from its reach "seamen" and "railroad employees," as well as other transportation workers who belong to a "class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Consistent with this Court's instruction that the Section 1 exemption must be given a "narrow construction" (*Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 118 (2001)), a consensus has emerged among the courts of appeals that "[t]o determine whether a class of workers" falls within the exemption, a court must "consider whether the interstate movement of goods is a central part of the class members' job description." *Wallace* v. *Grubhub Holdings, Inc.*, 970 F.3d 798, 801 (7th Cir. 2020) (Barrett, J.); *see also Cunningham* v. *Lyft, Inc.*, 17 F.4th 244, 253 (1st Cir. 2021) (exemption applies only to "classes of transportation workers primarily devoted to the movement of goods and people beyond state boundaries"); *Capriole* v. *Uber Techs., Inc.*, 7 F.4th 854, 862 (9th Cir. 2021) ("[T]he analysis focuses on the inherent nature of the work performed and whether the nature of the work primarily implicates inter- or intrastate commerce.); *Hamrick* v. *Partsfleet, LLC*, 1 F.4th 1337, 1346 (11th Cir. 2021) ("The class of workers' employment in the transportation industry must, in the main, have it move goods in interstate commerce." (quotation marks omitted)).

These uniform rulings from the courts of appeals have recognized two important limitations on the scope of the Section 1 exemption:

First, a class of transportation workers is not engaged in interstate commerce merely because some members of the class occasionally cross interstate lines. *See Cunningham*, 17 F.4th at 252–53; *Capriole*, 7 F.4th at 865; *Hill* v. *Rent-A-Ctr., Inc.*, 398 F.3d 1286, 1289 (11th Cir. 2005). A contrary interpretation would allow the exception to swallow the rule, as every national class of transportation workers in the modern economy includes *some* members who have crossed interstate lines in the course of their work.

Second, a class of transportation workers is not engaged in interstate commerce merely because some members of the class incidentally transport goods or people that have moved or will move in interstate commerce. *See Cunningham*, 17 F.4th at 250–51; *Capriole*, 7 F.4th at 865–67; *Hamrick*, 1 F.4th at 1346–51; *Wallace*, 970 F.3d at 802–03. A class is eligible for the Section 1 exemption only if it is "defined by its engagement in interstate commerce" (*Wallace*, 970 F.3d at 800), and incidental contact with goods that have crossed or will cross a state line does not suffice.

The court below purported to adhere to this standard (*see* Pet. App. 9a), but also indicated that the Section 1 exemption applies to classes of transportation workers whose work is "so closely related to interstate transportation as to be practically a part of it" (Pet. App. 17a (alteration and quotation marks omitted). The Court should reject this judicial gloss on the statute and adopt the limitations described herein, which are faithful to the text and structure of the FAA and provide predictability and uniformity in the application of the Section 1 exemption.

ARGUMENT

I. INCIDENTAL CROSSING OF STATE LINES IS NOT SUFFICIENT TO TRIGGER THE SECTION 1 EXEMPTION

The First, Ninth, and Eleventh Circuits—the only courts of appeals to have decided the issue—have all held that the crossing of interstate lines incident to a class of workers' primary job responsibilities is not sufficient to trigger the Section 1 exemption. *See Cunningham*, 17 F.4th at 252–53; *Capriole*, 7 F.4th at 865; *Hill*, 398 F.3d at 1289; *see also Wallace*, 970 F.3d at 800 ("[S]omeone whose occupation is not defined by its engagement in interstate commerce does not qualify for the exemption just because she occasionally performs that kind of work."); *Osvatics* v. *Lyft, Inc.*, 535 F. Supp. 3d 1, 18 (D.D.C. 2021); *Scaccia* v. *Uber Techs., Inc.*, No. 18-CV-418, 2019 WL 2476811, at *4 (S.D. Ohio June 13, 2019). As these lower court decisions recognize, reading Section 1 to require something more than incidental interstate crossing accords with the text and structure of Section 1.

As an initial matter, the Section 1 exemption focuses on the "*class* of workers engaged in foreign or interstate commerce," not the work done by any individual class member. 9 U.S.C. § 1 (emphasis added); *see also Hill*, 398 F.3d at 1289 (noting that "[t]he emphasis" of Section 1 is "on a class of workers in the transportation industry, rather than on workers who incidentally transported goods interstate as part of their job"). The question is thus "'not whether the *individual worker* actually engaged in interstate commerce, but whether *the class of workers to which the complaining worker belonged* engaged in interstate commerce.'" *Wallace*, 970 F.3d at 800 (emphasis in original) (quotation marks omitted); *see also Harper* v.

Amazon.com Servs., Inc., 12 F.4th 287, 293 (3d Cir. 2021) ("[T]he inquiry regarding § 1's residual clause asks a court to look into classes of workers rather than particular workers." (quotation marks omitted)).

This emphasis on the "class" of workers dispels any suggestion that an *individual* worker's transportation across interstate lines is sufficient. Because the proper focus is on whether "the 'class of workers' *as a whole* is ... engaged in interstate commerce" (*Cunningham*, 17 F.4th at 253 (emphasis added)), the experience of some minority of class members who may sometimes cross state lines is irrelevant: Interstate transportation must comprise a "*central part* of the class members' job description." *Wallace*, 970 F.3d at 801 (emphasis added). Any other interpretation is contrary to the plain text of the statute. *See Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) ("plain and unambiguous statutory language" must be enforced "according to its terms").

Moreover, exempting all workers who may occasionally cross interstate lines as an incident to their primary job responsibilities would contravene this Court's instruction in Circuit City that the exemption be given a "narrow construction." *Circuit City*, 532 U.S. at 118. While the phrase "involving commerce" used in Section 2 "indicates Congress' intent to regulate to the outer limits of its authority under the Commerce Clause," this Court in *Circuit City* determined that the phrase "engaged in commerce" in Section 1's residual clause has "a more limited reach." *Id.* at 115. Applying the maxim *ejusdem generis*, the Court explained that the scope of the residual clause must be "controlled and defined by reference to the enumerated categories of workers ['seamen' and 'railroad employees'] which are recited just before it," and "should

be read to give effect to th[ose] terms." *Ibid.* The Court therefore held that the Section 1 exemption extends only to classes of "transportation workers," and that giving the Section 1 exemption "a narrow construction," while adopting "an expansive reading" of Section 2, is "consistent with the FAA's purpose" of enforcing agreements to arbitrate. *Id.* at 118–19.

Far from being "narrow," interpreting the Section 1 exemption to cover any classes of transportation workers whose members occasionally cross state lines would allow the Section 1 exemption to "swallow the general policy requiring the enforcement of arbitration agreements." *Hill*, 398 F.3d at 1290. That is because virtually *every* conceivable class of transportation workers includes some members who have crossed interstate lines at some point in their work—a pizza delivery driver taking food from Cincinnati to Newport, Kentucky; a rideshare driver operating in the DC-Maryland-Virginia region; a newspaper delivery person traveling from the east side of Chicago to deliver papers in Hammond, Indiana. Under the principle of *ejusdem generis*, a "class" of workers must be framed at the same level of generality as the statute's enumerated examples—"seamen" and "railroad employees." 9 U.S.C. § 1. Because neither of those classes is restricted by geography, any class of "other" transportation workers must also be analyzed without regard to geographical limitations. *See Capriole*, 7 F.4th at 862; *see also Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006) (describing the "national policy" favoring arbitration memorialized in the FAA).

For the same reasons, extending the exemption to all classes of workers including some members who have crossed interstate lines would violate the maxim

that "courts must give effect, if possible, to every clause and word of a statute." *Liu* v. *SEC*, 140 S. Ct. 1936, 1948 (2020) (quotation marks omitted). Such an interpretation would sweep in all kinds of workers whose work is fundamentally and principally intrastate. The exemption's limitation to only those classes of transportation workers "engaged in foreign or interstate commerce" would thus be a nullity. Interpreting Section 1's residual clause to exclude those workers whose central role involves intrastate travel, by contrast, gives effect to every word in Section 1. *See FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (courts must interpret statutes "as a symmetrical and coherent regulatory scheme," and "fit, if possible, all parts into an harmonious whole" (internal citations and quotation marks omitted)).

Reading the exemption to include workers who only occasionally travel interstate also would defy commonsense. Words used in a statute retain their "ordinary English" meaning. *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017). As a matter of "ordinary English," though, no one would say that, for example, a pizza delivery driver crossing state lines is engaged in "foreign or interstate commerce." *See Hill*, 398 F.3d at 1289–90 ("[t]here is no indication that Congress" was concerned about "regulating the interstate 'transportation' activities of [a] ... pizza delivery person who delivered pizza across a state line to a customer in a neighboring town"); *see also Rittmann* v. *Amazon.com, Inc.*, 971 F.3d 904, 926–27 (9th Cir. 2020) (Bress, J., dissenting) (similar). The term "foreign or interstate commerce" naturally denotes something beyond the occasional border hopping that millions of Americans do each day on their way to work, recreation, or family. Indeed, if it were otherwise, the Section 1 exemption would essentially

be coextensive with the interstate reach of the FAA more broadly, an interpretation already rejected by this Court. *See Circuit City*, 532 U.S. at 114–15.

There is no permissible reading of the Section 1 exemption that would extend it to cover those classes of transportation workers whose work is fundamentally intrastate, but whose members occasionally cross interstate state lines as an incident to their primary job responsibilities. To suggest otherwise would tear a hole in the FAA and make federally compelled arbitration the exception, not the rule, for many types of workers. The Court should reject any such expansion of the plain text.

II. INCIDENTAL INTERACTION WITH GOODS OR PEOPLE MOVING IN INTERSTATE COMMERCE IS NOT SUFFICIENT TO TRIGGER THE SECTION 1 EXEMPTION

The second limitation on the Section 1 exemption uniformly recognized by the courts of appeals is that a class of transportation workers who merely interact with goods or persons previously moved in interstate commerce cannot qualify for the Section 1 exemption if the members do not serve as an "integral part of a single, unbroken stream of interstate commerce." *Capriole*, 7 F.4th at 867; *see also Cunningham*, 17 F.4th at 251; *Hamrick*, 1 F.4th at 1346–51; *Wallace*, 970 F.3d at 802–03; *Osvatics*, 535 F. Supp. 3d at 12–13. Thus, "to fall within the exemption, the workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders." *Wallace*, 970 F.3d at 802. As a result, courts have held that rideshare drivers who pick up passengers at an airport or food delivery drivers who deliver food items previously moved in interstate commerce do not qualify for the exemption. *See Cunningham*,

17 F.4th at 251; *Capriole*, 7 F.4th at 865; *Wallace*, 970 F.3d at 802.

This requirement flows from the statutory text. The Section 1 exemption is focused on "what the worker does," not "where the goods have been." *Wallace*, 970 F.3d at 802; *see also In re Grice*, 974 F.3d 950, 958 (9th Cir. 2020) (same). Analyzing the origin or ultimate destination of the goods or persons moved by a small number of class members thus does not answer the central statutory question—whether the class of transportation workers as a whole is "*defined* by its engagement in interstate commerce." *Wallace*, 970 F.3d at 800 (emphasis added). If, as is the case with rideshare drivers and other similarly situated workers, the "interstate provenance" of the goods or persons transported "does not affect the actual work" done by the class (*Rittmann*, 971 F.3d at 926 (Bress, J., dissenting)), then in no sense can interstate transportation be deemed a "central part of the class members' job description" (*Wallace*, 970 F.3d at 801).

The maxim of *ejusdem generis* is again applicable here. Under that canon, the class must be engaged in the flow of interstate commerce *in the same way* as railroad workers and seaman. *See Wallace*, 970 F.3d at 801. And for "seamen and railroad workers, the interstate movement of goods and passengers over long distances and across national or state lines is an indelible and central part of the job description." *Capriole*, 7 F.4th at 865 (quotation marks omitted); *see also Harper*, 12 F.4th at 300 (Matey, J., concurring).

As petitioner notes, at the time of the FAA's enactment, "both seamen and railroad employees predominantly served in cross-border capacities." Opening Br. 29. But the designation of someone as a "seaman" or a "railroad employee" is not dependent on the

nature of the good she is transporting—it turns on the actual work being done. And the work paradigmatically done by seamen and railroad workers—as a whole—is to transport goods and people across sea and rail in a single stream of commerce. A class of transportation workers that does not serve as an "integral part of a single, unbroken stream of interstate commerce" therefore cannot qualify for the Section 1 exemption, because such a class is not engaged in the same work as the statutory exemplars. *Capriole*, 7 F.4th at 867.

This Court has endorsed this distinction on numerous occasions. Most notably, in *United States* v. *Yellow Cab Co.*, 332 U.S. 218 (1947)—a case arising under the Sherman Act—the Court considered whether an alleged conspiracy to restrain competition in taxi services to and from Chicago train stations fell within the scope of the Sherman Act's prohibition of unreasonable restraints on "interstate commerce." *Id.* at 225. The Court answered that question in the affirmative for taxi transportation *between* railroad stations, noting that "[t]he railroads often contract[ed] with the passengers to supply between-station transportation in Chicago," and the taxicab company "then contract[ed] with the railroads and the railroad terminal associations to provide this transportation." *Id.* at 228. In light of the extensive coordination involved, the Court held that the taxicab service between stations in Chicago was "clearly a part of the stream of interstate commerce." *Ibid.*

But the Court reached the opposite conclusion for taxi transportation "to and from Chicago railroad stations" and other parts of the city. *Yellow Cab*, 332 U.S. at 230. "[S]uch transportation," the Court held,

was "too unrelated to interstate commerce to constitute a part thereof." *Ibid.* As the Court explained, "the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination." *Id.* at 231. This is because "[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," with "[t]axicab service ... but one of the many that may be used," "contracted for independently of the railroad journey." *Id.* at 232. Accordingly, "[w]hat happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement." *Ibid.*

The Court's recognition in *Yellow Cab* that transportation detached from any continuous stream of interstate commerce is of a decidedly *intra*state nature is consistent with numerous Supreme Court decisions predating the FAA's passage in 1925. In decisions construing the meaning of interstate commerce across a range of statutes, the Court consistently distinguished between the local leg of a coordinated, integrated interstate trip and mere local transport to and from a place where an interstate trip could take place or could have taken place. These decisions inform the ordinary meaning of the phrase "engaged in foreign or interstate commerce" at the time of the FAA's passage. *See New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 539 (2019).

In *New York ex rel. Pennsylvania Railroad Co.* v. *Knight*, 192 U.S. 21 (1904), the State had imposed a tax on a railroad company for operating a cab service

that transported passengers to and from the railway's ferry terminal, an interstate hub. *Id.* at 22. The defendant company contended that the tax unconstitutionally regulated interstate commerce because the cab service was "part of" of the railroad company's "interstate transportation" business. *Id.* at 25. This Court disagreed, holding that "the cab service is an independent local service, preliminary or subsequent to any interstate transportation," *id.* at 28, because it 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.

Although representing only the broadest possible interpretation given the differing text, structure, and circumstances (*see* Opening Br. 36–41), cases interpreting the Federal Employers Liability Act ("FELA") confirm that engagement in interstate or foreign commerce requires *at least* something more than interaction with goods or people previously in the flow of interstate commerce. In *Illinois Central Railroad Co.* v. *Behrens*, 233 U.S. 473 (1914), for example, the Court held that a worker "was not [providing] a service in interstate commerce" within the meaning of the FELA when he "was engaged in moving several cars, all loaded with intrastate freight, from one part of the city to another," without knowing whether the freight would subsequently be shipped elsewhere once delivered by the railroad to their intrastate destination. *Id.* at 478. That the goods *may* have been bound for out-of-state was irrelevant: The work performed by the worker involved wholly intrastate transportation and was not coordinated with interstate shipment.

And in *McCluskey* v. *Marysville & Northern Railway Co.*, 243 U.S. 36 (1917), the Court held that a railroad was not engaged in interstate commerce for FELA purposes when it transported lumber to a transit hub from which it would be sold and potentially moved out of state. *Id.* at 38. The railroad "had no concern with the subsequent disposition" of the goods, and whether the goods "were going outside of the state, depended upon chance or the exigencies of trade." *Id.* at 39. Such intrastate transport "to the depot where the journey is to commence," the Court held, is "no part of" a subsequent interstate trip, which did not begin at least "[u]ntil" those goods were "committed" by the railroad "to a common carrier for transportation to [another] state." *Ibid.* (quotation marks omitted). A mere "chance" connection to interstate commerce would not suffice.

Two more cases decided in the immediate aftermath of the FAA's passage employ the same reasoning. In *Atlantic Coast Line Railroad Co.* v. *Standard Oil Co. of Kentucky*, 275 U.S. 257 (1927), the Court held that a railroad company was engaged in purely intrastate commerce when transporting oil from storage tanks at a port in Florida to other destinations within the state. That was so even though the oil had been brought to the terminal from out-of-state. *Id.* at 267. Again, the same distinction appears: "[T]he railroad company" merely "aid[ed] the delivery of the oil" from the tanks to intrastate locations; it did not have "anything to do with determining what the ultimate destination of the oil is." *Id.* at 269–70. Because the railroad did not coordinate transportation with the prior interstate delivery as part of an integrated journey, the railroad's activity was "all intrastate commerce." *Id.* at 267.

Finally, in *Moore* v. *New York Cotton Exchange*, 270 U.S. 593 (1926), the Court considered the Sherman Act's application to 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 603–04. Because the purchase and delivery agreements did "not provide for" or "contemplate" interstate shipment of cotton, the Court held that the cotton exchange was a "purely local" business. *Id.* at 604. The Court explained that any "interstate shipments … actually made" under these circumstances would be a pure "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." *Ibid.*

This uniform precedent makes clear that, at the very least, the transportation of goods and people untethered to any continuous stream of interstate commerce generally constitutes *intra*state commerce. Notably, the FAA was enacted to combat state-law hostility to arbitration (*see Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 219 (1985)), and this Court has already determined that the Section 1 exemption must be given a "narrow construction" more limited in scope than other provisions that evince Congress's intent to exercise its full powers under the Commerce Clause (*Circuit City*, 532 U.S. at 118). As a result, the phrase "engaged in foreign or interstate commerce" in the FAA must be construed *even more narrowly* than similar phrases used in other legislation (such as FELA). *See, e.g.*, *Atchison, Topeka & Santa Fe Ry. Co.* v. *Buell*, 480 U.S. 557, 562 (1987) ("We have recognized generally that the FELA is a broad remedial statute, and have adopted a standard of liberal construction in order to accomplish Congress' objects."

(alteration and quotation marks omitted)); *Atl. Cleaners & Dyers* v. *United States*, 286 U.S. 427, 435 (1932) (Congress in enacting the Sherman Act exercised "all the power it possessed" under the Commerce Clause); *Boyle* v. *United States*, 40 F.2d 49, 51 (7th Cir. 1930) ("It is not necessary to a violation of the [Sherman Act] that the transgressors themselves be engaged in [interstate] commerce."). In no event, therefore, can or should the Section 1 exemption be given a *broader* construction than those statutes.

CONCLUSION

The Court should confirm that the Section 1 exemption applies only to those classes of transportation workers for which the interstate movement of goods is a central of their job description, and should not disturb the well-defined limitations on the exemption uniformly recognized by the courts of appeals.

Respectfully submitted.

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