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 RESPONDENT

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INTRODUCTION

The Federal Arbitration Act exempts the employment contracts of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The statute's text thus makes clear that "seamen" and "railroad employees" are classes of workers "engaged in foreign or interstate commerce." The question here is whether airline employees who load and unload cargo are also members of "a class of workers" that, like railroad employees and seamen, is "engaged in foreign or interstate commerce."

They are. When the FAA was enacted, commerce took place by rail and by sea. Seamen and railroad employees played a "necessary role in the free flow" of goods and passengers. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 (2001). Today, that same commerce takes place by air. And airline employees play the same "necessary role." That is all that's needed to resolve this case.

Southwest's contrary argument wrongly assumes that the relevant "class of workers" is ramp-agent supervisors rather than airline employees. But the statute exempts "seamen" and "railroad employees"—not "deckhands, yardmen, signal workers, and engineers."

And even if the text could support Southwest's specific-task-based approach, those who load and unload airline cargo—Latrice Saxon's actual job—would be exempt. The FAA's words carry the meaning they had "at the time of the Act's adoption in 1925." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019). By then, it was settled that those engaged in "the loading or unloading of an interstate shipment" were "engaged in interstate commerce." *Balt. & Ohio Sw. R.R. Co. v. Burtch*, 263 U.S. 540, 542, 544 (1924). For decades, this Court had held that

loading and unloading *is* commerce, because goods can't cross state lines if they're never loaded in the first place.

Southwest's response is to rewrite the statute: Although it *says* "any other class of workers engaged in foreign or interstate commerce," the airline argues that what it really *means* is "any other class of workers aboard a vessel that crosses state lines." But if that's truly what it meant, "Congress could have written the statute" that way. *McElroy v. United States*, 455 U.S. 642, 656 (1982). In fact, this Court has rejected the argument, in the context of a roughly contemporaneous provision, that a reference to activities "in interstate or foreign commerce" was limited to "activities that occur while crossing state borders." *Id.* at 648. By 1925, "this Court had made clear that interstate commerce begins well before state lines are crossed," so "there is no basis" to "adopt such a limited reading." *Id.* at 653, 656.

Although Southwest claims that seamen and railroad employees meant workers who crossed borders, its own authority says the opposite. Its lead case on seamen, *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005), involved a dredge worker who never left Boston Harbor. And the statute on which its railroad-employees argument depends (the Hours of Service Act), expressly applied to train dispatchers and other workers transmitting orders from a tower or a station—workers who themselves didn't go anywhere. Contrary to what Southwest says, seamen were simply those who did the work of the ship; and railroad employees were those who did the work of the railroad—whether they crossed state lines or not. And both classes of workers included cargo loaders.

Every indication about what the statute means thus points the same way: Airline employees, including cargo

loaders, are exempt. And for good reason. Seamen and railroad employees, like airline employees, are known, administrable categories that actually encompass those workers "necessary to the free flow" of goods and passengers. The same can't be said for Southwest's approach, which would inevitably task courts with nebulous empirical inquiries into the extent to which workers or categories of workers cross state borders.

Lacking any basis in the FAA's text, Southwest is ultimately "left to appeal to its [pro-arbitration] policy." *New Prime*, 139 S. Ct. at 543. But this Court recently, and unanimously, rejected that move, urging courts to adhere to the text and thereby "respect the limits to which Congress was prepared to go in adopting the Arbitration Act." *Id.* The Court should follow that same path here.

STATEMENT

A. Statutory background

The Federal Arbitration Act requires courts to enforce arbitration agreements. 9 U.S.C. § 2. That mandate, however, is subject to an important exception: "[N]othing" in the Act "shall 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. The statute gives examples of specific matters that are "in foreign commerce," including "agreements relating to wharfage," *id.*—that is, fees for loading or unloading goods. The question in this case is whether airline workers who load and unload foreign or

interstate cargo are a "class of workers engaged in foreign or interstate commerce."[1]

1. This Court has twice interpreted the FAA's worker exemption. In *New Prime*, the Court stressed that the exception's words carry the meaning they did at "the time of the Act's adoption in 1925," not what comes to mind to "lawyerly ears today." 139 S. Ct. at 539. The Court observed that, in 1925, the terms "seamen" and "railroad employees" "swept more broadly at the time of the Act's passage than might seem obvious today." *Id.* at 543. Just three years before the FAA's enactment, for example, the Railroad Labor Board read the word "employee" in the Transportation Act of 1920 to refer to "anyone 'engaged in the customary work directly contributory to the operation of the railroads.'" *Id.* And the Erdman Act of 1898, a law aimed at railroad strikes, evinced "an equally broad understanding of 'railroad employees,'" *id.*, extending to "all persons actually engaged in any capacity" in railroad operations "of any description." *Id.* at 543 n.12.

In addition to emphasizing the breadth of these terms' meaning in 1925, *New Prime* rejected the suggestion that the exception's text should be tempered by a "liberal federal policy favoring arbitration agreements." *Id.* at 543. Accepting an "appeal to [] policy" would "thwart rather than honor" congressional intent because the FAA was the product of "legislative compromise[]" that was "essential to [the] law's passage." *Id.*

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[1] For simplicity, this brief omits ellipses when shortening "engaged in foreign or interstate commerce" to "engaged in commerce." In addition, unless otherwise specified, all internal quotation marks, alterations, and citations are omitted from quotations throughout.

History shows just how essential. The compromise reflected in the transportation-worker exception came in direct response to vociferous criticism from labor unions, led by the International Seamen's Union, that surfaced immediately after the FAA was introduced. *See* Imre Szalai, *Outsourcing Justice: The Rise of Modern Arbitration Laws in America* 131–45 (2013) (recounting this history). In Senate testimony, the chair of the ABA committee that drafted the bill explained that the seamen's union objected "on the ground that the bill in its present form would affect, in fact compel, arbitration of the matters of agreement between the stevedores"—workers who load and unload cargo—"and their employers." *Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearing on S. 4213 and S. 4214 Before a Subcomm. of the S. Comm. on the Judiciary*, 67th Cong. 9 (1923). "Now, it was not the intention of the bill," he said, "to have any such effect as that. It was not the intention of this bill to make an industrial arbitration in any sense." *Id.* The chair then offered what would become the worker exception. *See id.* With this addition, "[t]here was no opposition to the bill." H.R. Rep. No. 68-96, at 1 (1924).

New Prime explained why adherence to the text of this exception matters. By respecting the exception's text, the judiciary "respect[s] the limits up to which Congress was prepared to go when adopting the Arbitration Act." *New Prime*, 139 S. Ct. at 543.

2. This Court's only other encounter with the FAA's worker exemption was two decades ago in *Circuit City*, which interpreted the exemption to reach the "contracts of employment of transportation workers, but not other employment contracts." 532 U.S. at 109. Employing the

logic of *ejusdem generis*, the Court reasoned that the residual clause must be defined by its relationship to the two specifically enumerated "classes of workers"—"seamen" and "railroad employees" —each of which are "engaged in foreign or interstate commerce." *Id.* at 114–15. The critical "linkage" between these classes, the Court explained, is "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods." *Id.* at 121.

Circuit City also addressed why its holding was consistent with Congress's purpose: to avoid disrupting "established or developing statutory dispute resolution schemes" for "those engaged in transportation." *Id.* By this time, Congress had already enacted statutes covering the "arbitration of disputes between seamen and their employers" as well as "grievance procedures [] for railroad employees." *Id.* (referring to the Shipping Commissioners Act of 1872 and the Transportation Act of 1920). Another statute governing railroad-labor disputes, the Railway Labor Act of 1926, was "imminent," with an amendment "soon to follow" that "include[d] air carriers and their employees." *Id.*

B. Factual and procedural background

1. Respondent Latrice Saxon is a ramp supervisor at Southwest Airlines. App. 1.[2] Ramp supervisors like Ms. Saxon load and unload cargo from Southwest planes, as well as supervise others who do the same. *Id.* at 28–29. Despite their title, the majority of ramp supervisors' work is not supervision, but rather personally loading and

[2] All references to App. are to the appendix filed in the Seventh Circuit. All references to the docket are to the district court docket, case number 19-cv-403 (N.D. Ill.).

unloading interstate cargo. App. 2. And that cargo includes not just passengers' luggage, but also airmail and freight. *Id.* at 3, 28; *see TranStats,* Bureau of Transportation Statistics, https://perma.cc/Z38Q-ZF2K (last visited Feb. 24, 2022) (showing that Southwest shipped over 259 million pounds of freight in 2020).

Ramp supervisors at Southwest consistently work over forty hours a week, but do not get paid overtime. App. 17. The company requires its ramp supervisors to arrive early to perform work before the start of their official shift and to work through meal breaks. App. 17–18. But it does not pay them for this work. *Id.*

Ms. Saxon, therefore, sued Southwest, on behalf of herself and all other similarly situated workers, for the overtime they are owed under the Fair Labor Standards Act. *See id.* at 22–24; 29 U.S.C. § 207(a)(1) (requiring overtime compensation "at a rate not less than one and one-half times the regular rate").

2. Southwest moved to dismiss Ms. Saxon's claims under the FAA. As a condition of employment, Southwest imposes an arbitration clause on all employees who are not subject to a collective bargaining agreement, including Ms. Saxon. That clause, Southwest argued, requires that Ms. Saxon arbitrate her overtime claim. And, the company contended, it must be enforced under the FAA.

In response, Ms. Saxon argued that the FAA doesn't apply. The statute, she explained, exempts "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Because ramp supervisors regularly load and unload interstate cargo, Ms. Saxon argued, they are a class of workers "engaged in . . . commerce" and are therefore exempt.

3. After the district court held that airline employees who load and unload interstate cargo are not exempt from the FAA, Pet. 39a, the court of appeals unanimously reversed. Pet. 21a. Unlike the district court, the court of appeals held that the "inquiry" into which workers are exempt from the FAA "begins with the text." Pet. 5a. To be "engaged in interstate or foreign commerce," the court explained, is to be "actively occupied in the enterprise of moving goods across interstate lines." Pet. 9a.

And although this line may not always be "easy to draw," the court held, "[w]herever the line may be, . . . ramp supervisors fall on the transportation-worker side of it." Pet. 9a. By loading and unloading interstate cargo, ramp supervisors "are actually engaged in the movement of goods in interstate commerce." Pet. 10a. "Actual transportation," the court explained, "is not limited to the precise moment either goods or the people accompanying them cross state lines." *Id.* To the contrary, "[l]oading and unloading cargo onto a vehicle so that it may be moved interstate, too, is actual transportation." *Id.* "[A]nd those who performed that work were recognized in 1925," when the FAA was passed, "to be engaged in commerce." *Id.*

The court of appeals stressed that this Court has repeatedly made clear that "loading and unloading a vessel" is "*itself* interstate or foreign commerce"—and that workers who load and unload interstate shipments are therefore "engaged in . . . commerce." Pet. 10a–11a (emphasis added). "[A]irplane cargo loaders," the court held, are no different.

The court found "further support[]" for its conclusion by examining "the enumerated categories of seamen and railroad employees in § 1." Pet. 12a. The court concluded

that, historically, both categories included cargo loaders. Pet. 12a–18a. In fact, the court pointed out, just a year before the Act was passed, this Court had held that it was "too plain to require discussion that" railroad employees responsible for "the loading or unloading of an interstate shipment" are engaged in commerce. Pet. 17a.

The court also rejected Southwest's argument that exempting cargo loaders from the FAA—as its text requires—would be "the start of a slippery slope." Pet. 19a. "The loading of goods into a vehicle traveling to another state or country," the court explained, "is the step that both immediately and necessarily precedes the moment the vehicle and goods cross the border." *Id.*

SUMMARY OF ARGUMENT

I.A. Statutory interpretation starts with the text. And the text of the FAA tells us that a "class of workers" is exempt from the statute if they are "engaged in commerce" in the same way as "seamen" and "railroad employees." It's difficult to imagine a class of workers more analogous to seamen and railroad employees than airline employees. Airlines today play precisely the same "necessary role in the free flow of goods" as shipping companies and railroads did in the 1920s. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114 (2001). And their employees are no less integral to that transportation mission than seamen and railroad employees. In 1925, both seamen and railroad employees were broad categories of workers encompassing all those who did the work of the ship or the railroad. The airline employees exempt from the FAA must have a similar scope: those who do the work of the airline. Cargo loaders certainly fit this bill.

B. Even if the relevant "class" is not airline employees, but cargo loaders themselves, they are still exempt. Again, the text of the statute controls. The FAA itself identifies fees for loading and unloading foreign cargo as "matters *in* foreign commerce." 9 U.S.C. § 1 (emphasis added). If loading and unloading is "in commerce," those who are engaged in it must be "engaged in commerce." Indeed, by the time the FAA was enacted, decades of precedent had established that cargo loaders are "engaged in commerce." And cargo loaders were not just *like* "seamen" and "railroad employees"; they *were* "seamen" and "railroad employees."

Cargo loaders also fit within the modern use of "engaged in commerce" as a jurisdictional term of art—"persons or activities within the flow of interstate commerce," *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974). It's black-letter law that interstate commerce begins when goods are delivered to the carrier and ends only after they've been unloaded and delivered to their recipient. By definition, then, cargo loading—and cargo loaders—are within that flow.

C. Purpose and history only confirm what the text requires: Airline employees are exempt. As *Circuit City* explains, the exemption was designed to avoid "unsettl[ing]" the dispute-resolution regimes that governed and would soon be enacted to govern transportation workers—and specifically, the Transportation Act of 1920 and the soon to be enacted Railway Labor Act. 532 U.S. at 121. Both statutes covered virtually all railroad employees. And the Railway Labor Act today also covers all airline employees. If the FAA does not exempt these workers, it would have conflicted with the dispute resolution regime in place for railroad

workers when the statute was passed and the statute that governs railroad and airline employees today.

II.A Southwest can't overcome the text of the statute, so it asks this Court to rewrite it. The airline redefines "seamen" as international border-crossers and "railroad employees" as interstate border-crossers. But as Southwest's own authority demonstrates, neither is correct. The case law Southwest itself cites demonstrates that seamen need not cross a single border—or even leave a single state. So long as a shipworker contributed to the mission of the ship, they were a seaman. And the statute upon which Southwest rests its railroad employees argument itself applies to workers who never left the watchtower.

B. The airline's attempt to redefine "engaged in commerce" as personally "moving goods or people" across borders fares no better. Southwest cannot identify even a single example of the phrase "engaged in commerce" ever being given that meaning. If Congress wanted to exempt solely those workers who crossed state lines, it could have said so. Instead, it used a phrase that had long been understood to include all those engaged in commerce—whether they personally crossed state lines or not. This Court has already rejected a similar attempt to redefine a similar statutory phrase. It should do the same here.

III. Unable to find support in the statute's text, Southwest appeals to policy. But, as this Court has already made clear, any policy in favor of arbitration cannot trump the FAA's text. And in any event, policy considerations cut the other way. Southwest's proposed rule inevitably raises the question: How does a court determine when a specific-task-based *class* of workers crosses state lines? Is it when any of the workers do? Is there some threshold

percentage? Not to mention that by giving "engaged in commerce" a unique meaning just for purposes of the FAA, Southwest does just what this Court has warned against: adopt a variable meaning for a common jurisdictional phrase. The exemption is already narrow. It applies only to transportation workers. There's no good reason to give it a meaning that its text cannot bear.

ARGUMENT

I. The FAA exempts the employment contracts of airline employees who load and unload cargo.

The FAA exempts "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. At issue in this case is whether airline employees who load and unload cargo are members of any "class of workers" that, like railroad employees and seamen, is "engaged in commerce."

For two reasons, they are:

First, the statute's text makes clear that railroad employees and seamen are each a "class of workers engaged in commerce." Railroad employees are "necessary" to "the free flow of goods" and passengers by rail. *Circuit City*, 532 U.S. at 121. And seamen are "necessary to the free flow of goods" by sea. *Id.* The analogous class for air transportation is airline employees—workers who are "necessary" to the transportation of goods and passengers by plane. And just as rail and ship cargo loaders are railroad employees and seamen, airline cargo loaders are airline employees.

Second, even if, as Southwest argues, the class of workers is defined not by industry, but by specific job description, cargo loaders must be included because they are themselves engaged in interstate commerce as that

phrase was understood in 1925. The year before the FAA's enactment, this Court recognized that cargo loaders are "engaged in interstate commerce." *Burtch*, 263 U.S. at 542. Overwhelming authority supports the point. Under any test, then, airline cargo loaders are covered.

A. Airline employees are a "class of workers engaged in commerce" in the same way as seamen and railroad employees.

1. In interpreting the FAA, this Court looks to the meaning of its terms at "the time of the Act's adoption in 1925." *New Prime*, 139 S. Ct. at 539. Here, the key terms are "engaged in commerce," "seamen," and "railroad employees."

There's little dispute about the literal definition of the words "engaged in commerce" in 1925. "Commerce with foreign countries and among the states" meant "intercourse and traffic, including . . . navigation and the transportation and transit of persons and property." *McCall v. California*, 136 U.S. 104, 108 (1890); *accord Black's Law Dictionary* 220 (2d ed. 1910). Commerce encompassed "all the means, instruments, and places by and in which intercourse and traffic are carried on," as well as "the act of carrying them on at these places, and by and with these means." *McCall*, 136 U.S. at 108.

And the word "engaged" simply meant "occupied," "employed," or "involved." *Webster's New International Dictionary of the English Language* 725 (1920). Thus, to be "engaged in commerce" was to be "employed," "occupied," or "involved" in the trade or traffic between people of different countries or states—be it the purchase or sale of goods, the transportation of those goods, or the transportation of passengers.

In the FAA, "the words 'any other class of workers engaged in commerce' constitute a residual phrase, following, in the same sentence, explicit reference to 'seamen' and 'railroad employees.'" *Circuit City,* 532 U.S. at 114. So that residual phrase must "be controlled and defined by reference to the enumerated categories of workers which are recited just before it." *Id.* at 115. This means that the "class[es] of workers" exempt from the FAA are those "engaged in commerce" in the same way that railroad employees and seamen were in 1925.

As this Court made clear in *Circuit City*, the obvious "linkage" between railroad employees and seamen—the linkage that "explains" their connection to the residual clause—is their "necessary role in the free flow of goods" and passengers; that is, their role in transportation. *Id.* at 121.[3] Railroad employees are "necessary" to the transportation of goods and passengers by railroad, while seamen are "necessary" to the transportation of goods and passengers by boat. By the same token, airline employees are "necessary" to the transportation of goods and passengers by airplane—and hence they are a "class of workers engaged in foreign or interstate commerce" in the same way as those enumerated classes.

Railroad employees. The ordinary meaning of "railroad employees" in 1925 was, if anything, "broad[er]" than it is today. *New Prime*, 139 S. Ct. at 543. The term meant, simply, those who do the work of the railroad. It was not limited to employees who worked aboard a train and crossed state lines. Indeed, the vast majority of railroad employees didn't work aboard a train *at all*. *See*

[3] *Circuit City* does not specify passengers, but as Southwest recognizes (at 17) it was beyond dispute in 1925 that commerce includes the transportation of passengers, as well as goods.

39th Annual Report of the Interstate Commerce Commission, H.R. Doc. No. 69-56, at 116–19 (1925). Railroad employees included not only conductors and engineers, but also station attendants, freight handlers, baggagemen, signalmen, flagmen, and shop employees. *See, e.g.*, *Int'l Ass'n of Machinists v. Atchison, Topeka, & Santa Fe Ry.*, Decision No. 2, 1 R.L.B. 13, 22–27 (1920) (setting wages for these employees).

That's how this Court used the term. *See, e.g.*, *Heymann v. S. Ry. Co.*, 203 U.S. 270, 273 (1906) (referring to station agent who moved package from train platform to railroad's freight warehouse). It's how agencies that governed the railroads used it. *See, e.g.*, United States Railroad Administration, General Order No. 27, *Wages of Railroad Employees* (1919) (setting wages for "railroad employees," which included those who worked in the yard, in the shop, or on the platform). And it's how the term was used in dispute-resolution statutes. "In 1922, for example, the Railroad Labor Board interpreted the word 'employee' in the Transportation Act of 1920 to refer to anyone 'engaged in the customary work directly contributory to the operation of the railroads.'" *New Prime*, 139 S. Ct. at 543. The Railway Labor Act, the dispute-resolution statute enacted shortly after the FAA, had a similarly broad definition. *See* Railway Labor Act, ch. 347, § 1, 44 Stat. 577 (1926).

In short: Railroad employees did the work of the railroad. And when the work of the railroad was moving freight, those who loaded and unloaded the train were railroad employees. *See, e.g.*, *United Bhd. of Maint. of Way Emps. & Ry. Shop Laborers v. St. Louis Sw. Ry. Co.*, Decision No. 120, 2 R.L.B. 96, 101–02 (1921) (citing numerous decisions holding that baggage and freight

handlers were railroad employees); *Burtch*, 263 U.S. at 543.

Seamen. Just as railroad employees were those who do the work of the railroad, seamen were those who did "the ship's work." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355 (1991) (explaining the meaning of seamen in 1920). Thus, "seamen" included everyone from cooks and surgeons to dredge workers, fishers, carpenters, and cargo loaders. *See id.* at 343; *The Minna*, 11 F. 759, 760 (E.D. Mich. 1882).

It was "not necessary that a seaman aid in navigation or contribute to the transportation of the vessel" itself. *Id.* at 355. Nor was it necessary to venture out into foreign waters—or even leave the state. *See, e.g.*, *Ellis v. United States*, 206 U.S. 246, 259–60 (1907). In *Ellis*, for example, this Court held that a crane operator employed on a dredge in Boston Harbor was a seaman. *See id.* So too were pilots—workers primarily based at ports who went aboard boats to help guide them into port. *Wilander*, 498 U.S. at 344. As were barge workers who loaded and unloaded goods being shipped from one New York port to another. *Disbrow v. The Walsh Bros.*, 36 F. 607, 608 (S.D.N.Y 1888), *cited with approval in Ellis*, 206 U.S. at 260.

To be sure, the prototypical seaman had—as modern cases have put it—an "employment-related connection to a vessel." *Wilander*, 498 U.S. at 354. But there was no requirement that the vessel (or seaman) "sail[] the high seas." Pet'r Br. 28. Instead, they needed only "contribute to the function of the vessel or to the accomplishment of its mission." *Id.* at 340. If the vessel's purpose was to dredge a harbor, the person operating the dredge was a seaman. *Ellis*, 206 U.S. at 259–60. If it was a passenger

ship, the doctor was a seaman. *See Wilander*, 498 U.S. at 355. And if it was a cargo vessel, the shipworkers who loaded and unloaded the cargo were seamen. *See, e.g.*, *The Donna Lane*, 299 F. 977, 978 (W.D. Wash. 1924) (describing shipping articles as providing "[c]rew to load and discharge all cargo"); *Disbrow*, 36 F. at 608 (barge-workers primarily engaged in "loading and unloading" were seamen because a barge was a "vessel engaged in the transportation of cargo").[4]

Airline employees. The obvious parallel to seamen and railroad employees—both of which are a "class of workers" engaged in commerce—is airline employees. As an industry, air transportation has the same relationship to commerce as transportation by sea or rail. Airlines today play the same "necessary role" in commerce as railroads and shipping companies did in 1925—providing a dominant mode of transportation for getting goods and passengers from one place to another. *See* Bureau of Transportation Statistics, https://perma.cc/6HKZ-2DXX (last visited Feb. 24, 2022) (U.S. airlines carried over 371 million passengers in 2020); *TranStats,* Bureau of Transportation Statistics, https://perma.cc/Z38Q-ZF2K (U.S. airlines shipped over 37 billion pounds of freight in 2020).

And the workers who do the work of the airlines have the same relationship to commerce as those who do the work of the railroad or ship. If anything, airline workers have a closer connection to interstate commerce than some seaman, for example, who might work on a

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[4] *See also, e.g.*, *The Minna*, 11 F. at 760 ("I have never heard it questioned but that the deck hands of a lake propeller, whose duties are simply to load and discharge fuel and freight . . . are entitled to" a seaman's lien for wages.).

stationary vessel. *See, e.g.*, *Stewart*, 543 U.S. at 486, 495–97 (2005). As a result, the relevant "class of workers" engaged in commerce is airline employees.

In resisting this conclusion, Southwest argues that the relevant "class of workers" is not airline employees but cargo loaders (or their immediate supervisors). Pet'r Br. 33–35. But that job-title-specific view is at odds with the text of the statute, which treats the relevant class at a higher level of generality. The words "any other" make clear that "seamen" and "railroad employees" are each a "class of workers" under the statute (and that the class is "engaged in foreign or interstate commerce"). 9 U.S.C. § 1; *see also Circuit City*, 532 U.S. at 114 (noting that both are "classes of workers"). Under the logic of *ejusdem generis*, then, the "class of workers" in the residual clause should be treated at a similar level generality—a category akin to "railroad employees" and "seamen," but for airlines. To do otherwise, as Southwest does (at 34), is to destroy the parallelism by comparing the "class" of "railroad employees" and "seamen"—classes defined by their industry, both of which included many different types of tasks—with the job-title category of "ramp-agent supervisors."

Because airline cargo loaders like Ms. Saxon do the work of the airline, they are airline employees "engaged in commerce" and thus are exempt from the FAA. Ms. Saxon's contract of employment with Southwest is, therefore, exempt from the FAA.

B. Even if the relevant class is cargo loaders, they are "engaged in commerce."

Even if, as Southwest argues, the class of workers should be defined not by industry—like seamen and railroad employees—but by specific job description, cargo

loaders would still be exempt. By the time the FAA was enacted, it had been clear for decades that loading and unloading *is* commerce; and that cargo loaders, therefore, are "engaged in commerce." Indeed, the year before the FAA was enacted, this Court held the proposition was "too plain to require discussion." *Burtch*, 263 U.S. at 544. Even the FAA itself makes this clear. That, too, is enough to resolve this case.

1. When the FAA was enacted, it was well established that cargo loaders are engaged in commerce.

Surrounding text. The statutory language leading up to the phrase "engaged in commerce" provides the first clue. The transportation-worker exemption is at the end of a long sentence that begins by defining maritime transactions. "Maritime transactions," the statute says, "means charter parties, bills of lading of water carriers, *agreements relating to wharfage*," or "any other matters *in foreign commerce* . . . within admiralty jurisdiction." 9 U.S.C. § 1 (emphasis added). Wharfage is the "money paid" to a dock-owner "for landing goods upon, or loading them from, a wharf"—that is, for loading goods onto a ship and unloading them. *Bouvier's Law Dictionary* 3450 (8th ed. 1914).

Thus, according to the FAA itself, loading and unloading goods is a "matter[] *in* foreign commerce." 9 U.S.C. § 1 (emphasis added). Because even Southwest does not dispute that employees whose work is "in commerce" are, by definition, "engaged in commerce," the FAA itself makes clear that cargo loaders are "engaged in commerce."

The statute's reference to "seamen" and "railroad employees" reinforces the point. As explained above, in

1925, seamen routinely loaded and unloaded ships. And railroad employees routinely loaded and unloaded trains. Airline cargo loaders are no different. Just like those who load boats and those who load trains, airline cargo loaders are "engaged in commerce."

Precedent. Even without these other textual indications, it would be clear that the statute exempts cargo loaders. "We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent." *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010). Congress enacted the FAA against the backdrop of decades of cases holding that loading and unloading is itself transportation; that it *is* commerce—and that cargo loaders, therefore, are "engaged in commerce."

a. Cargo loaders are core transportation workers. Without them, "[c]arrying-vessels would be of little or no value." *Ex parte Easton*, 95 U.S. 68, 75 (1877). Foreign and interstate transportation necessarily entails "the taking up of persons or property at some point and putting them down at another." *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196, 203 (1885). Loading and unloading, then, is "as much a part of the interstate transportation" of goods as their "movement across the state line." *St. Louis, S.F. & Tex. Ry. Co. v. Seale*, 229 U.S. 156, 161 (1913).

In the years preceding the passage of the FAA, this Court repeatedly held as much. In contract cases, in Commerce Clause cases, in statutory-interpretation cases, the principle was always the same: "[T]he business of landing and receiving passengers and freight" is "a part of" their "transportation." *Gloucester Ferry*, 114 U.S. at 203; *see, e.g.*, *City of Sault Ste. Marie v. Int'l Transit Co.*, 234 U.S. 333, 340–41 (1914) (Commerce Clause case holding that "receiving and landing" of "passengers and

property" is "an essential part of the[ir] interstate transportation"); *United States v. Union Stockyards & Transit Co. of Chi.*, 226 U.S. 286, 304 (1912) (Interstate Commerce Act case holding that loading and unloading is transportation); *Erie R.R. Co. v. Shuart*, 250 U.S. 465, 468 (1919) (contract interpretation case holding that "there could be no doubt" that "the work of unloading" cargo by a carrier was transportation).

Statutes, too, reflected this common understanding. *See, e.g.*, Harter Act, ch. 105, §1, 27 Stat. 445 (1893) (prohibiting cargo vessels from liability for the "proper loading, stowage, . . . or proper delivery of any and all lawful merchandise or property committed to" them for carriage).

b. By the time the FAA was enacted, then, it had long "been clear" that this essential transportation work is an integral part of foreign and interstate commerce—and that those engaged in it are, therefore, "engaged" in commerce. *City of Sault Ste. Marie*, 234 U.S. at 340.

The FAA wasn't the first statutory provision to apply solely to transportation workers "engaged in commerce." Seventeen years earlier, Congress enacted the Federal Employers' Liability Act, which used "almost exactly the same phraseology." *Tenney Eng'g, Inc. v. United Elec. Radio & Mach. Workers of Am., (U.E.) Local 437*, 207 F.2d 450, 453 (3d Cir. 1953). FELA required railroads to compensate employees who were injured while the railroad was "engaging in commerce" and the employee was "employed by such carrier in such commerce." Federal Employers' Liability Act of 1908, ch. 149, 35 Stat. 65. By its terms, then, the Act applied only where both the railroad and the railroad employee were "engaged in commerce" when the employee was injured. *See Second*

Emp'rs' Liab. Cases, 223 U.S. 1, 47 (1912); *Phila., Balt. & Wash. R.R. Co. v. Smith*, 250 U.S. 101, 102 (1919).

In interpreting FELA, this Court repeatedly held that railroad employees were "engaged in commerce" if they were "engaged in interstate transportation, or in work so closely related to it as to be practically a part of it." *Shanks v. Del., Lackwanna, & W. R.R. Co.*, 239 U.S. 556, 558 (1916).

Given the decades of precedent holding that cargo loading *is* transportation, applying that test to cargo loaders was straightforward. And the year before the FAA's enactment, this Court held that "the loading or unloading of an interstate shipment by the employees of a carrier" are "engaged in interstate commerce." *Burtch*, 263 U.S. at 542, 544.

Nor was this holding unique to FELA. To the contrary, it reflected decades of precedent holding that loading and unloading is commerce. *See, e.g.*, *Gloucester Ferry*, 114 U.S. at 196 (a tax on loading and unloading interstate passengers and freight is a tax "upon the commerce between the two states"); *Crutcher v. Kentucky*, 141 U.S. 47, 57 (1891) (a regulation of foreign ships "landing goods and passengers" is a regulation of "foreign commerce"); *Easton*, 95 U.S. at 75 (a place to load and unload goods is "wellnigh as essential to commerce as ships and vessels" themselves); *Tex. Transp. & Terminal Co. v. City of New Orleans*, 264 U.S. 150, 151 (1924) (arranging for cargo to be loaded and unloaded is "interstate or foreign commerce").

And this Court had repeatedly held that to load or unload cargo, therefore, was to engage in commerce. *See, e.g.*, *Old Dominion S.S. Co. v. Virginia*, 198 U.S. 299, 299–300, 306, 309–10 (1905) (tugs used to load and unload ships

were "engaged in interstate commerce"); *Foster v. Davenport*, 63 U.S. (22 How.) 244, 245–46 (1859) (small boat used to load and unload cargo from ships too large to dock was "employed" in commerce); *Hays v. Pac. Mail S.S. Co.*, 58 U.S. (17 How.) 596, 597, 599–600 (1854) (ship unloading "passengers and freight" is "engaged in lawful trade and commerce").

Ordinarily, "we assume that when a statute uses" a phrase that has been defined by this Court, "Congress intended" that phrase "to have its established meaning." *Wilander*, 498 U.S. at 342. The FAA is no exception.

2. The more recent usage of the phrase "engaged in commerce" as a term of art also encompasses cargo loaders.

Cargo loaders are "engaged in commerce" even under the more recent understanding of those words as a jurisdictional term of art. *See Circuit City*, 532 U.S. at 117–18. Used in this way, this Court has defined "engaged in commerce" as a term of art to mean "persons or activities within the flow of interstate commerce"—as opposed to conduct that merely affects interstate commerce. *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974). Cargo loaders easily satisfy this definition.

It has been well established for over a century that interstate commerce begins when goods are delivered to a carrier to be loaded onto a train or boat. *S. Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U.S. 498, 526–27 (1911). And they remain in the "channels of interstate commerce" until they've been delivered. *Browning v. City of Waycross*, 233 U.S. 16, 19–20 (1913); *see Rhodes v. Iowa*, 170 U.S. 412, 414 (1898); *see also Covington Stock-Yards Co. v. Keith*, 139 U.S. 128, 136 (1891) ("[T]ransportation . . . begins with [goods'] delivery to the carrier to be loaded

upon its cars, and ends only after the [goods are] unloaded and delivered, or offered to be delivered.").[5]

Thus, loading and unloading is, by definition, an activity "within the flow of interstate commerce." Loading cargo onto a plane (or train or boat) occurs *after* the cargo has been delivered to the carrier—that is, after its transportation in commerce has begun. And unloading that cargo occurs before it can be delivered—before the commerce has ended. Cargo loaders, therefore, "participate directly" in the flow of interstate commerce. *United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 285 (1975).

That's why this Court has continued to hold that workers "busied in loading or unloading an interstate or foreign vessel" are "engaged in interstate or foreign commerce"—well after the phrase became a term of art. *See, e.g.*, *Puget Sound Stevedoring Co. v. Tax Comm'n of State of Wash.*, 302 U.S. 90, 92 (1937), *overruled on other grounds by Dep't of Revenue of State of Wash. v. Ass'n of Wash. Stevedoring Cos.*, 435 U.S. 734 (1978); *accord Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 433–34 (1947), *overruled on other grounds by Wash. Stevedoring Cos.*, 435 U.S. at 734; *Int'l Longshoremen's Ass'n, AFL-CIO v. Allied Int'l, Inc.*, 456 U.S. 212, 218–19 & n.13 (1982).

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[5] Of course, vessels intended to be used "for indefinite storage" or as a point of sale to the public might no longer be in commerce even if they're not unloaded. *See, e.g.*, *Tex. Co. v. Brown*, 258 U.S. 466, 477–78 (1922). But in the ordinary course, when a carrier was responsible for transporting someone else's goods, loading and unloading those goods occurred "in commerce." *See, e.g.*, *Swift & Co. v. Hocking Valley Ry. Co.*, 243 U.S. 281, 290 (1917); *Binderup v. Pathe Exch., Inc.*, 263 U.S. 291, 309 (1923).

Cargo loaders, this Court has explained, whether they personally load cargo or supervise the loading, are "as much an agency of commerce as" the ship's "master." *Puget Sound*, 302 U.S. at 92. They are as much within the flow of commerce. *See id.* They are, therefore, equally "engaged in commerce."

C. The purpose and historical context of the exemption confirm that airline cargo loaders are exempt.

The text of the FAA and case law at the time of its enactment leave no doubt that it exempts airline employees who load and unload cargo. But if further evidence were needed, the purpose and historical context of the exemption confirm the statute's plain meaning. As this Court explained in *Circuit City*, Congress crafted the exemption for a "simple reason": to avoid "unsettl[ing]" the "dispute resolution schemes" that it was developing to govern transportation workers and protect "the free flow of goods" and passengers. 532 U.S. at 121.

In 1925, this was an urgent task. The labor unrest that had wracked the transportation industries for decades regularly ground commerce to a halt—particularly in the railroad industry. *See* William G. Mahoney, *The Interstate Commerce Commission/Surface Transportation Board as Regulator of Labor's Rights and Deregulator of Railroads' Obligations*, 24 Transp. L.J. 241, 245 n.19, 247 (1997) (detailing hundreds of strikes). These strikes were not limited to those who worked aboard the train. Not long before the FAA was passed, for example, a nationwide strike of railroad shopmen—train repair and maintenance workers—paralyzed the railroads for months. *See* Margaret Gadsby, *Strike of the Railroad Shopmen*, 15 Monthly Lab. Rev., no. 6 (Dec. 1922) at 1–2, 6.

Congress had repeatedly tried to quell the unrest—and its impact on commerce—by passing dispute-resolution statutes governing the railroad industry. In 1925, the dispute-resolution statute that governed the industry was the Transportation Act of 1920, ch. 91, 41 Stat. 456. That statute imposed a "duty" on "all carriers and their officers, employees, and agents to exert every reasonable effort" to ensure that labor disputes did not cause "any interruption to the operation of any carrier." *Id.* § 300, 41 Stat. at 469. The statute governed all railroad employees, not just those who worked on the train—including freight handlers and baggage and parcel room employees. *See, e.g.*, *id.*; *Int'l Ass'n of Machinists*, 1 R.L.B. at 22; *Ry. Emps.' Dept., A.F. of L. (Federated Shop Crafts) v. Ind. Harbor Belt R.R. Co.,* Decision No. 982, 3 R.L.B. 332, 337 (1922).

If the FAA did not exempt these employees, it would have done precisely what this Court says it was designed to avoid: unsettle the dispute-resolution statute that governed the railroad industry at the time "in favor of whatever arbitration procedures the parties' private contracts might happen to contemplate." *New Prime*, 139 S. Ct. at 537.

The same is true of airline employees today. Not long after the FAA was passed, Congress replaced the Transportation Act with the Railway Labor Act—a statute drafted by labor and industry together to end the cycle of labor disputes and strikes once and for all. *See* Railway Labor Act, ch. 347, 44 Stat. 577 (1926); *see also Highlights of the Railway Labor Act*, R.R. Admin. Off. of Pol'y, https://perma.cc/3UF8-Y2N2 (last visited Feb. 24, 2022). And in 1936, Congress extended the Act to cover airline employees. An Act to Amend the Railway Labor

Act § 202, 45 U.S.C. § 182. The Railway Labor Act continues to govern railroad and airline workers to this day.[6]

And it, too, is broad. It covers "every air pilot or other person who performs any work as an employee or subordinate official" of an air carrier—including cargo loaders. 45 U.S.C. § 181. The statute sets forth detailed dispute-resolution procedures to govern labor disputes, *see id.* §§ 183–85—procedures that, for decades, have, for the most part, worked. If the FAA does not exempt these workers, they will be subject to two separate dispute-resolution statutes, again, doing exactly what *Circuit City* says the exemption was designed to avoid. *See Circuit City*, 532 U.S. at 121 (citing Railway Labor Act and its extension to airline employees as a dispute-resolution statute the failure to exempt transportation workers from the FAA would unsettle).[7]

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[6] Southwest asserts (at 46) that this Court should ignore the Transportation Act because it was eventually replaced with the Railway Labor Act, and should ignore the Railway Labor Act because it hadn't been passed yet. This Court should do neither. Whatever the problems with the Transportation Act, they were not with its definition of employees. Congress enacted a similarly broad definition in the Railway Labor Act. And if that weren't enough, the bill Congress was considering contemporaneously with the FAA—that was ultimately rejected in favor of the Railway Labor Act—also had a similarly broad definition. *See* S. 2646, 68th Cong. § 1(6) (1924). When Congress passed the FAA, it was clear that all railroad employees were—and would continue to be—covered by other dispute-resolution statutes.

[7] Southwest argues (at 48) that Ms. Saxon isn't a member of a union, so the Railway Labor Act doesn't apply to her. But the transportation-worker exemption doesn't distinguish between unionized and nonunionized employees. If Ms. Saxon isn't exempt, neither are airline cargo loaders that are subject to the Act.

D. Ms. Saxon is a cargo loader whose contract of employment is exempt from the Federal Arbitration Act.

Despite her job title, Ms. Saxon spends most of her days loading and unloading cargo herself. *See* Pet. 9a–10a. Southwest claims that she only "occasionally assisted ramp agents in the loading and unloading process." Pet'r Br. 7. But the airline offers no basis for that assertion and the record demonstrates that Ms. Saxon, like other ramp supervisors, in fact spends most of her time—an estimated three out of five days a week—actually loading and unloading cargo herself. Pet. 9a–10a; App. 29. As the court of appeals explained, "Southwest offered no evidence to contradict this estimate." Pet. 10a.

But even if Ms. Saxon's job consisted mostly of supervising others, the outcome would be the same. Supervisors of cargo loaders are just as integral to the airline's transportation mission as cargo loaders and are, themselves, engaged in commerce. *See Puget Sound*, 302 U.S. at 92 ("A stevedore who in person or by servants does work so indispensable is as much an agency of commerce as shipowner or master."). Southwest's own cases show that supervisors were seamen. *See Wilander*, 498 U.S. at 339 (paint foreman); *Chandris, Inc. v. Latsis*, 515 U.S. 347, 350 (1995) (supervising engineer). And railroad employees, too, included supervisors. H.R. Doc. No. 69-56 at 118 ("[s]upervising baggage agents"); *Int'l Ass'n of Machinists*, 1 R.L.B. at 22–23, 27 ("baggage and parcel room employees," "[s]towers or stevedores," and "supervisors" performing "analogous service[s]").

However she is labeled—cargo loader, supervisor of cargo loaders, or ramp supervisor—Ms. Saxon falls within

a class of workers engaged in commerce and so her contract of employment is exempt from the FAA.

II. Southwest's contrary interpretation has no basis in the statute.

Southwest argues that the words "engaged in commerce," as used in the FAA, mean working aboard a vessel crossing state or international boundaries. That interpretation has no basis in what it meant to be a seaman or railroad employee when the FAA was enacted. And it has no basis in what it meant to be "engaged in commerce."

A. Neither railroad employees nor seamen were defined by border-crossing.

Southwest argues that the link between seamen and railroad employees is not, as this Court held in *Circuit City*, their "necessary role in the free flow of goods." 532 U.S. at 121. Instead, the airline contends, it is that both classes of workers in 1925 "predominantly" worked aboard a vessel and crossed borders. Pet'r Br. 34. But the vast majority of railroad employees in 1925 *neither* worked aboard a vessel *nor* crossed state lines. And while seamen were defined by their connection to a vessel, it was well established that they need not—and often did not—cross any borders. The common link between railroad employees and seamen therefore cannot be border-crossing or vessel-boarding. *See Cleveland v. United States*, 329 U.S. 14, 17 (1946) ("[W]e could not give the words a faithful interpretation if we confined them more narrowly than the class of which they are a part.").

Railroad employees. Southwest cannot seriously dispute that the ordinary meaning of railroad employees in 1925 was simply those who did the work of the

railroad—or that this ordinary meaning included cargo loaders. So instead, it asks this Court to adopt an unusual definition: workers subject to the Hours of Service Act. That statute, Southwest asserts, applied solely to those railroad employees who "traveled from state to state." Pet'r Br. 26.

But, by its terms, the Hours of Service Act *didn't* apply solely to those workers who crossed state lines. To the contrary, the statute specifically identified multiple groups of workers who did not travel at all but were nevertheless covered: operators, train dispatchers, and any other employees who transmitted "orders pertaining to or affecting train movements" from an office, tower, or station. Hours of Service Act, ch. 2939, § 2, 34 Stat. 1415, 1416 (1907).

The point of the statute was to prevent train accidents by limiting the hours of workers whose jobs were critical to the safety of the train. *See Chi. & Alton R.R. Co. v. United States*, 247 U.S. 197, 199 (1918); *United States v. Pa. R.R. Co.*, 239 F. 576, 577 (E.D. Pa. 1917). So its application did not depend on whether a railroad employee rode the rails or watched the yard. It depended on whether their vigilance on the job was essential to preventing train collisions. *See Chi. & Alton R.R. Co*, 247 U.S. at 199–200 (holding that a railroad employee "on duty . . . in a shanty" was subject to the statute).[8]

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[8] Southwest also cites the Boiler Inspection Act, ch. 103, § 1, 36 Stat. 913 (1911), which established a system for inspecting locomotive boilers. It's unclear why the Act contains any definition of employees at all—it may just have been a mistake. *See* 46 Cong. Rec. 2074 (1911) (explaining that there were "many inaccuracies and awkward expressions" in the bill that Congress decided not to correct because

Moreover, there's no reason to interpret the FAA, a statute about dispute resolution, as having the same scope as a statute designed to prevent train accidents. The central purpose of the transportation-worker exemption was to avoid unsettling pre-existing (and soon to be enacted) dispute-resolution schemes, *see Circuit City*, 532 U.S. at 121—statutes that had long used the ordinary meaning of railroad employees. *Cf.* Antonin Scalia & Bryan A. Garner, Reading Law 252 (2012) ("[L]aws dealing with the same subject . . . should if possible be interpreted harmoniously.").

Seamen. Southwest's effort to redefine seamen as limited to international border crossers fares no better. It was well established that ship workers need *not* venture out into foreign waters—or even leave the state—to be considered seamen. *See, e.g.*, *Ellis*, 206 U.S. at 259.

Southwest's own authority proves the point. The airline opens its discussion of seamen by citing *Stewart v. Dutra* for the proposition that the term seamen was "limited to workers who rode the waves transporting goods or people." Pet'r Br. 24 (citing 543 U.S. at 487). But *Stewart* holds almost precisely the opposite: that a dredge digging a trench beneath Boston Harbor—that is, a watercraft that goes almost nowhere—is a vessel. 543 U.S. at 484–85, 490–97. And, therefore, the decision makes clear, those employed on the dredge who contribute to its purpose are seamen—even though they never leave the harbor. *See id.* at 487–88, 494–95; *see also Stewart v.*

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labor and industry had already agreed to its text). Its only reference to employees is a requirement for carriers to file inspection reports, "under the oath of the proper officer or employee." § 6, 36 Stat. at 915. The "proper officer or employee" to file government reports would presumably be an office employee—not one who worked on trains.

Dutra Const. Co., 418 F.3d 32, 36 (1st Cir. 2005) (explaining, on remand, that this Court's decision "shows beyond hope of contradiction that the plaintiff"—an engineer aboard the dredge—was a "seaman"); *Sw. Marine, Inc. v. Gizoni*, 502 U.S. 81, 92 (1991) (foreman who worked on floating platform in ship repair facility in a single state could be seaman).[9]

Southwest also relies on the Shipping Commissioners' Act, but that statute defined "ship[s]" to "comprehend every description of vessel navigating on any sea *or channel, lake or river*"—which are *local* bodies of water. Shipping Commissioners' Act, ch. 322, § 65, 17 Stat. 262, 277 (1872) (emphasis added); *see also* Revised Statutes of 1873, § 3 (defining "vessel" for any statute without its own definition to include any craft "used, or capable of being used, as a means of transportation on water").

Southwest emphasizes (at 24) that Section 12 of the Shipping Commissioners Act was explicitly limited to foreign voyages and those from one coast to the other. *See id.* § 12. But the need to explicitly specify that a statutory

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[9] Southwest also repeatedly mischaracterizes this Court's decision in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995). For example, it cites *Chandris* for the proposition that "seamen served 'a significant portion' of their time at sea sailing from port to port." Pet'r Br. 30. But what *Chandris* actually says—and it is not even *Chandris* that says this; it's a parenthetical quoting a treatise—is that seamen must "demonstrate that a significant portion" of their "work was done *aboard a vessel*." *Chandris*, 515 U.S. at 361 (emphasis added). Nothing about "sailing from port to port." Similarly, Southwest cites *Chandris* for the proposition that "primarily working on a vessel during an international or interstate voyage was 'the essence of what it mean[t] to be a seaman.'" Pet'r Br. 26. But *Chandris* does not say that either. The "essence" of being a seaman, *Chandris* holds, is the seaman's "connection with a vessel." *Id.* at 369–70. The "international or interstate voyage" characterization is Southwest's creation.

provision governing seamen applied only to long voyages demonstrates that seamen were *not* defined by their travel across borders—otherwise, such a limitation would be unnecessary. Congress limited some statutory provisions governing seamen to long voyages, not because those who didn't cross borders weren't seamen, but because seamen "with frequent opportunities for reaching ports" didn't need the same protections. *See Inter-Island Steam Navigation Co. v. Byrne*, 239 U.S. 459, 462–63 (1915).

Stevedores. Southwest relies heavily on the assertion that seamen did not include stevedores—land-based workers who specialized in loading and unloading. As an initial matter, that wasn't universally true: As Southwest itself acknowledges, just a year after the FAA was passed, this Court held that stevedores were seamen for purposes of the Jones Act, a workers' compensation statute passed in 1920 that only covered seamen. *See Int'l Stevedoring Co. v. Haverty*, 272 U.S. 50, 52 (1926); *Wilander*, 498 U.S. at 346–47 (explaining that *Haverty* followed earlier lower-court decisions interpreting "seamen" broadly).

And the word seamen was used to mean stevedores in hearings leading up to passage of the FAA itself. *See Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearing on S. 4213 and S. 4214 Before a Subcomm. on the Judiciary, U.S. Sen.*, 67th Cong. 9 (1923) (Statement of W.H.H. Piatt) (lead drafter of the FAA testifying that to avoid the "danger" that the FAA would "compel" arbitration "between the *stevedores* and their employers," the statute should contain an exemption for "*seamen* or any other class of workers in interstate or foreign commerce" (emphasis added)).

Regardless, the question isn't whether cargo loaders *are* seamen. It's whether they are members of a class of workers engaged in commerce in the same way as seamen (and railroad employees). There's no doubt that airline cargo loaders are engaged in commerce in the same way as seamen and railroad employees. For one thing, stevedores and seamen *both* loaded and unloaded cargo from boats—that is, seamen still included cargo loaders, even when the term didn't include stevedores specifically. *See, e.g.*, *To Promote the Welfare of American Seamen: Hearings on H.R. 8069 Before the H. Comm. on the Merch. Marine & Fisheries*, 66th Cong. 41, 106 (1919) (statement of Leslie A. Parks, Able Seaman, New York City) ("In the freight ships the deck crews load and unload."). And stevedores who worked for the railroad *were* "railroad employees." *See Int'l Ass'n of Machinists*, 1 R.L.B. at 22–23.

More importantly, this Court has explicitly held that stevedores have "the *same* relation" to commerce as seamen do. *Puget Sound*, 302 U.S. at 92 (emphasis added); *see also Joseph*, 330 U.S. at 427 ("stevedoring" is "obviously a continuation of [] transportation" because "transportation in commerce, at the least, begins with loading and ends with unloading"); *Ass'n of Wash. Stevedoring Cos.*, 435 U.S. at 749–50 (reaffirming that stevedoring is an "interstate commerce activity" even while overruling cases holding that states could not tax it).

"Transportation of a cargo by water is impossible or futile unless the thing to be transported is put aboard the ship and taken off at destination"—regardless of who performs the loading and unloading. *Puget Sound*, 302 U.S. at 92. Historically, the work of loading and unloading ships had been performed entirely by the ship's crew. *See*

Atl. Transp. Co. v. Imbrovek, 234 U.S. 52, 61–62 (1914). "[B]ut, owing to the exigencies of increasing commerce and the demand for rapidity and special skill," by the early twentieth century, "it ha[d] become a specialized service," often performed by stevedores. *Id.* at 62. But that didn't make that service any less integral to commerce. *Puget Sound*, 302 U.S. at 92.

Southwest argues that these cases rely on the incorrect assumption that stevedores are seamen. But the whole point of these cases is that stevedores are engaged in commerce even though they are *not* part of the crew, because cargo loading is itself commerce—regardless of who does it. *See id.*

Thus, this Court's cases about stevedoring only further demonstrate that cargo loaders are engaged in commerce.

B. The phrase "engaged in commerce" has never meant physically crossing state lines.

Southwest proposes that this Court read "engaged in commerce" to mean physically crossing borders. But the airline can't locate even a single relevant example of a court, administrative agency, or other authority that has adopted its proposal. If Congress wanted to exempt solely those workers who crossed state lines, it would have said so. Instead, it used a phrase that had long been understood to include all those engaged in commerce—whether they personally crossed state lines or not. This Court has already rejected a similar attempt to redefine a similar statutory phrase. It should do the same here.

1. In *McElroy v. United States*, this Court considered a criminal statute prohibiting "the transportation in interstate or foreign commerce of any forged securities."

455 U.S. at 642 (cleaned up). The "origin of the interstate commerce element" was an Act passed in 1919, just a few years before the FAA was enacted. *Id.* at 649–50 Much like Southwest here, the defendant argued that the statute's reference to "transportation in interstate or foreign commerce" meant that it was "limited to unlawful activities that occur while crossing state borders." *Id.* at 648.

This Court held otherwise. If Congress wanted to limit the statute to border-crossing, the Court explained, "Congress could have written the statute" that way. *Id.* Instead, though, the statute used the phrase "in interstate or foreign commerce," a phrase this Court had repeatedly held was not limited to crossing state lines. *See id.* By 1919, "this Court had made clear that interstate commerce begins well before state lines are crossed, and ends only when movement of the item in question has ceased in the destination State." *Id.* at 653. Given that Congress could have—but didn't—limit the statute to border-crossing, this Court held, "there is no basis" to "adopt such a limited reading." *Id.* at 656.

2. Despite *McElroy*, Southwest identifies no case that supports limiting Congress's use of the phrase "engaged in commerce" in 1925 to mean "physically crossing state lines." The airline's lead authorities for this argument—a pair of cases from the 1970s (Pet'r Br. 2)—shed no light on what Congress meant fifty years earlier. The formulation on which Southwest relies, "direct participation" in the "interstate flow of goods," emerged well after the FAA was passed, once the phrase "engaged in commerce" had become a term of art. *See Circuit City*, 532 U.S. at 117.

In any event, as explained above, cargo loaders easily meet this standard: Where a good or passenger is

traveling from one state to another, it is *in* interstate transportation—*in* commerce—from the moment it is delivered to the carrier to the time it reaches the recipient. *See, e.g.*, *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 290–91 (1921). And every part of its handling throughout is, itself, commerce—even those that take place within a single state. *See, e.g.*, *Rhodes*, 170 U.S. at 413–14, 419 (transfer from platform to warehouse for delivery).

Southwest's own authority proves the point. Take, for example, *People of State of N.Y. ex rel. Pa. R.R. Co. v. Knight*, 192 U.S. 21 (1904). There, this Court held that "[u]ndoubtedly, a single act of carriage or transportation wholly within a state may be part of a continuous interstate carriage or transportation." *Id.* at 26. And it reiterated that a good begins its interstate journey when it's "committed to a common carrier for transportation to such state." *Id. at* 28. The local taxi service in that case, offered by a railroad, was not interstate transportation because it had "no contractual or necessary relation to interstate transportation." *Id.* at 27. It was "contracted and paid for independently of any contract or payment" for interstate railroad transportation. *See id.* at 26. In other words, it was not part of the passengers' continuous journey from one state to another. It was a separate, optional local service. This Court has already held that loading interstate or foreign cargo "has no resemblance" to the taxi service in *Knight*. *See Puget Sound*, 302 U.S. at 93–94. Unlike that taxi service, which was "independent[]" of any interstate transportation, cargo loading is "essential" to "commerce." *Id.* "The movement is continuous, is covered by a single contract, and is necessary in all its stages if transportation is to be accomplished without unreasonable impediments." *Id.* So

too here. Nobody would say that Southwest had fulfilled its contract of carriage if it failed to put the goods on the plane in the first place or failed to take them off at the end.

3. Most of Southwest's remaining arguments are trained almost entirely on a single statute—the Federal Employers' Liability Act. Because FELA applied to railroad employees who were injured while engaged in commerce, Southwest argues that it's irrelevant to understanding what it meant to be a transportation worker engaged in commerce.

This argument fails on its own terms. To take just one example, Southwest argues the statute was was broadly interpreted. But it couldn't have been. Because Congress's Commerce Clause power was construed extremely narrowly at the time, it could not have regulated workers who weren't "engaged in commerce." *See Emp'rs' Liab. Cases*, 207 U.S. 463, 496, 498 (1908). Southwest's argument to the contrary (at 39-41) relies almost entirely on cases that were decided *after* 1939, when FELA was amended to *remove* the requirement that workers be "engaged in commerce." *See Reed v. Pa. R.R. Co.*, 351 U.S. 502, 504 (1956).

But even if Southwest was correct about FELA, that wouldn't get it very far. The FELA cases did not invent a novel understanding of transportation or of commerce. They applied longstanding, black-letter law. Thus, even absent the FELA cases, the outcome here would be the same: It was clear in 1925, just as it is clear today, that cargo loaders are a "class of workers engaged in commerce."

The problem with Southwest's attempt to nitpick the FELA cases or the Commerce Clause cases (or any other cases it might seize on in its reply) is not just that it fails

in its own right.[10] It's that these cases all reflect the same timeworn understandings of what transportation in commerce meant. If Congress did not intend for the FAA to exempt workers who had long been understood to be "engaged in commerce," it would not have used those words.

Southwest attempts to save its atextual interpretation by pointing to the FAA's use of the phrase "engaged in foreign or interstate commerce." Because the statute defines "commerce" before it gets to the worker exemption, Southwest argues (at 16, 29) that the reference to "foreign or interstate commerce," rather than just commerce, is surplusage unless it's interpreted to mean that Congress "want[ed] to emphasize border-crossing." But the FAA's definition of commerce is broader than foreign or interstate commerce. It also includes commerce "in any Territory of the United States or in the District of Columbia." 9 U.S.C. § 1. So there's no reason not to interpret Congress to have meant anything other than what it said.

III. Southwest's policy arguments offer no valid basis to depart from the text.

Lacking any foothold in the FAA's text, context, or history, Southwest turns to policy. It contends that its construction of the statute is necessary to achieve the FAA's "proarbitration purposes," to avoid a "nonsensical"

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[10] The airline briefly argues (at 42) that this Court should just disregard cases that arose under the Commerce Clause—a perplexing assertion given that almost all of the contemporaneous cases Southwest cites are Commerce Clause cases, *see* Pet'r Br. 20–21. But Southwest can't dispute that these cases evidence what the word commerce—and the phrase "engaged in commerce"—meant at the time. *See McElroy*, 455 U.S. at 642.

outcome that would "undo" section 2, and to ensure a rule that operates without "complexity or uncertainty." Pet'r Br. 1–2, 5–6, 30–33, 44–48. None of these arguments is correct. And none authorizes judicial revision of the text.

1. This Court in *New Prime* rejected the argument that the FAA should be construed to promote arbitration at all costs. Like many statutes, the FAA was the product of "legislative compromise[]." *New Prime*, 139 S. Ct. at 543. Although section 2 favors arbitration, section 1 makes clear that this policy yields for transportation workers. By giving effect to the plain language of that exception, this Court "respect[s] the limits up to which Congress was prepared to go when adopting the Arbitration Act." *Id.*

2. Nor is Southwest's construction necessary to avoid a "nonsensical" result, or to preserve the "narrow" scope of section 1. Pet'r Br. 1–2. There is no dispute that, under this Court's precedents, section 2 is broad, while section 1 is comparatively narrow. Southwest itself recognizes as much, framing the question (at 16–17) in narrow terms—whether section 1 covers the employment contracts of certain kinds of transportation workers (cargo loaders). That question can be answered either way without threatening the broad sweep of section 2 or resurrecting the losing position in *Circuit City*.

Southwest's rule would, however, conflict with *Circuit City*'s guidance that "[a] variable standard for interpreting common, jurisdictional phrases would contradict [this Court's] earlier cases and bring instability to statutory interpretation." *Circuit City,* 532 U.S. at 117. The airline proposes that this Court accord the FAA a unique interpretation of the phrase "engaged in commerce"—exactly what this Court declined to do in *Circuit City.*

3. Southwest also claims (at 10, 32) that its rule is "clear and administrable," and that any other rule "would create daunting line-drawing problems." That is doubly wrong. For one thing, as to the question presented, Southwest's rule is *less* predictable and *harder* to administer, because it would require courts to ask all sorts of additional questions in determining whether someone is part of a "class of workers," 9 U.S.C. § 1, that "participate directly in the cross-border transportation of goods or people." Pet'r Br. 11. To list a few: How often does a class of workers have to cross state lines? Is it a percentage of their time? A percentage of the class? Nationally or regionally? For one carrier or all carriers? Is it an empirical question? How does a judge figure it out? The potential questions—and combinations of answers—are endless.

This is not to say that adhering to the text of the statute will resolve all questions under it, for all time. Under any interpretation, some close questions will remain. That's unavoidable. But in contrast to Southwest's position, Ms. Saxon's reading not only has the virtue of being grounded in the statutory text, context, and history; it also generates a coherent, sensible, and workable test that does not require courts to flyspeck particular job descriptions or undertake difficult empirical inquiries. Like railroad employees and seamen, airline workers plainly constitute a "class of workers engaged in foreign or interstate commerce" within the meaning of section 1.

Like railroad employees and seamen, airline workers are workers who play an essential role in accomplishing the airline's transportation mission—that is, getting passengers or goods from one place to another. This means that gate agents, cargo handlers, and flight

attendants come within section 1, while accountants or advertising executives at the airline's headquarters don't.

Finally, even if Southwest's rule were in fact easier to apply, that wouldn't change the outcome. Administrability concerns can help courts choose between two plausible interpretations of the text, but they grant courts no license to rewrite it. There is no canon of construction that authorizes judges to fashion their own easy-to-apply rules in lieu of what Congress wrote—no chapter of *Reading Law* espousing the supremacy of atextual bright-line rules. And the same goes for Southwest's other appeals to purpose and policy. Considerations like administrability and congressional policy can help to resolve ambiguity, not to create it. Here, cargo loaders are covered under *any* plausible reading of the residual clause. So there is no ambiguity. Which means this Court has no choice: It "may not rewrite the statute simply to accommodate [Southwest's] policy concerns." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 531 (2019).

CONCLUSION

This Court should affirm the Seventh Circuit's judgment.

Respectfully submitted,

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