No. 23-____

IN THE

Supreme Court of the United States

RANDSTAD INHOUSE SERVICES, LLC & RANDSTAD NORTH AMERICA, INC.,

Petitioners,

v.

ADAN ORTIZ, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Are employees who handle goods that travel in interstate commerce—but who do not transport those goods across borders and whose work does not directly engage with interstate transportation—"transportation workers" "engaged in foreign or interstate commerce" for purposes of the Federal Arbitration Act's § 1 exemption?

PARTIES TO THE PROCEEDING

Petitioners Randstad Inhouse Services, LLC and Randstad North America, Inc. (collectively, "Randstad") were Defendants-Appellants in the consolidated proceedings in the Ninth Circuit.

Respondents XPO Logistics, Inc., XPO Logistics, LLC, and XPO Logistics Supply Chain, Inc. (collectively, "GXO" [*]) were also Defendants-Appellants in the Ninth Circuit.

Respondent Adan Ortiz was Plaintiff-Appellee in the Ninth Circuit.

John Does 1-50 were named as Defendants in Ortiz's Complaint, but have not been served or identified, were not parties in the Ninth Circuit, and are not parties here.

CORPORATE DISCLOSURE STATEMENT

Petitioner Randstad Inhouse Services, LLC is a limited liability company. No publicly held corporation owns 10% or more of its stock.

Petitioner Randstad North America, Inc.'s common stock is 100% owned by Randstad Luxembourg UK Limited, whose ultimate parent, Randstad NV, is publicly traded on Euronext Amsterdam.

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[*] At the time relevant to this case, "GXO Logistics operated as XPO Logistics, and many of the affiliated entities retain the 'XPO' label." Pet.App.5a n.1. This petition follows the lead of the Ninth Circuit in referring to "the XPO/GXO defendants collectively as 'GXO.'" *Id.*

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Ortiz v. Randstad Inhouse Services, LLC, et al., No. Civ-SB-2204491 (San Bernadino Super. Ct. complaint filed Apr. 4 2022).

Ortiz v. Randstad Inhouse Services, LLC, et al., No. ED CV 22-01399 TJH (SHKx) (C.D. Cal.) (removed from state court Aug. 8, 2022; motion to compel arbitration denied Jan. 18, 2023).

Ortiz v. Randstad Inhouse Services LLC, et al., Nos. 23-55147 and 23-55149 (9th Cir.) (denial of motion to compel arbitration under the Federal Arbitration Act affirmed Mar. 12, 2024; denial of motion to compel arbitration under state law vacated and remanded for further proceedings Mar. 12, 2024).

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The District Court's order denying Petitioners' motion to compel arbitration is unreported but available at 2023 WL 2070833 and reproduced at Pet.App.44a-56a. The Ninth Circuit's opinion affirming the District Court's order denying Petitioners' motion to compel arbitration under the Federal Arbitration Act is reported at 95 F.4th 1152 and reproduced at Pet.App.1a-25a. The Ninth Circuit's opinion vacating the District Court's order denying Petitioners' motion to compel arbitration under California law is unreported but available at 2024 WL 1070823 and reproduced at Pet.App.26a-43a.

JURISDICTION

The Ninth Circuit issued its decision in this case on March 12, 2024. This petition is timely because it is filed on June 10, 2024, within ninety days of that decision. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

9 U.S.C. § 1 provides:

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

INTRODUCTION

Every day, businesses and individuals across the country agree to arbitrate because arbitration provides a simple, quick, and cheap means of dispute resolution. For almost a century, the Federal Arbitration Act ("FAA") has protected those agreements by requiring courts to enforce them. In recent years, however, that protection has been eroded by ever-expanding constructions of FAA § 1, which provides that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Notwithstanding this Court's repeated insistence that the exemption should be construed "narrowly," to sweep in only those workers who resemble "seamen" and "railroad employees," *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001), some lower courts have applied § 1 to workers far removed from the channels of interstate commerce. And the Courts of Appeals have openly disagreed over whether employees who do not transport goods across borders and whose work does not directly engage with interstate transportation fall within the exemption.

In the decision below, the Ninth Circuit staked out a sweepingly broad position on § 1's scope and cemented its position on the split by refusing to enforce an arbitration agreement between Petitioner Randstad and a warehouse worker, Respondent Ortiz. Ortiz never transported goods outside the warehouse, and the Ninth Circuit assumed that he never even loaded cargo or unloaded cargo from vehicles traveling across borders. Nevertheless, the court held that his mere handling of goods within the warehouse made

him subject to § 1 because he played a necessary role in the goods' "broader supply chain," Pet.App.20a—*i.e.*, in the "ongoing interstate journey to their final destination." Pet.App.16a.

In focusing on the goods' travel, rather than Ortiz's work, the Ninth Circuit has followed in the footsteps of the First Circuit. *See, e.g.*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 22 (1st Cir. 2020) (holding § 1 applicable to "workers moving goods or people destined for, or coming from, other states—even if the workers were responsible only for an intrastate leg of that interstate journey"). In both of those courts, workers can fall under § 1 not by virtue of their own role in interstate transportation, but simply because the goods they handle travel across state lines. The Eleventh and Fifth Circuits, by contrast, recognize that § 1 "is directed at what the class of workers is engaged in, and not what it is carrying." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021); *see also Lopez v. Cintas Corp.*, 47 F.4th 428, 430 (5th Cir. 2022) (same). So workers must themselves cross state lines or be engaged in a channel of interstate commerce to be exempt from the FAA. This split is both acknowledged and entrenched. *See, e.g.*, *Lopez*, 47 F.4th at 432 (recognizing that "sister circuits that have addressed this issue have come out different ways").

The question presented is also hugely important to businesses and workers nationwide. The mere fact of the split is antithetical to the uniform rule the FAA was designed to secure. The resulting threshold litigation (which is multiplying) undercuts the efficiency arbitration is designed to promote. And left uncorrected, the goods-focused approach embodied by

the decision below will void arbitration agreements in almost every sector of the economy, threatening to sweep in every worker who handles goods moving in interstate commerce—including those, like warehouse workers and retail shelf stockers, who never touch a vehicle at all.

That is exactly what this Court has said should *not* happen. In *Southwest Airlines Co. v. Saxon*, this Court held that courts must focus on "what [the workers] do[]." 596 U.S. 450, 455-56 (2022). And to fall within § 1, "transportation workers must be actively engaged in transportation of … goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (internal quotation marks omitted). The Court said the same thing in *Bissonnette v. Lepage Bakeries Park Street, LLC*, and dismissed the suggestion that "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration." 601 U.S. 246, 256 (2024). In both cases, the Court expressly reserved the question presented in this case. *Id.* at 252 n.2, 256; *Saxon*, 596 U.S. at 457 n.2.

The time has come for this Court to answer it. The Ninth Circuit's extension of § 1 to workers who have nothing to do with interstate transportation exemplifies a troubling trend in the ever-expanding arena of § 1 litigation. This case is also an unusually good vehicle, because there is no dispute about Ortiz's role. This Court should grant certiorari and restore § 1 to its proper scope.

STATEMENT

A. Statutory Background.

1. In 1925, Congress passed, and President Coolidge signed, the FAA. The statute was designed "to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). Consistent with that purpose, the FAA embodies a "liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). The Act's primary substantive provision, § 2, guarantees that arbitration agreements "in any … contract evidencing a transaction involving commerce … shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2.

Section 2 sweeps broadly. This Court has held that the phrase "involving commerce" "signals an intent to exercise Congress' commerce power to the full." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995). Moreover, § 2's "text reflects the overarching principle that arbitration is a matter of contract," and, "consistent with that text, courts must rigorously enforce arbitration agreements according to their terms." *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (internal quotation marks omitted).

2. Section 1 of the Act contains a limited exemption from § 2's requirement, providing that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate

commerce." 9 U.S.C. § 1. Three of this Court's cases interpreting the § 1 exemption bear on this petition.

First, in *Circuit City*, the Court held that § 1, unlike § 2, warrants "a narrow construction." 532 U.S. at 118. The Court rejected an interpretation of § 1 that would extend its "residual clause"—*i.e.*, the "any other class of workers engaged in foreign or interstate commerce" language—to *all* "contracts of employment." *Id.* at 109. Instead, it explained that under the *ejusdem generis* principle, the clause "should be read to give effect to the terms 'seamen' and 'railroad employees,' and should itself be controlled and defined by reference to the enumerated categories of workers which are recited just before it." *Id.* at 114-15. Consistent with those principles, the Court held that § 1 "exempts from the FAA *only* contracts of employment of *transportation workers*." *Id.* at 119 (emphases added).

Second, in *Saxon*, the Court laid out a two-step analysis for assessing whether a worker fits within § 1's residual clause. 596 U.S. at 455. At the first step, courts must "defin[e] the relevant 'class of workers'" by reference to "what [the workers] do[]." *Id.* at 455-56. At the second step, courts must "determine whether that class of workers is 'engaged in foreign or interstate commerce'" within the meaning of § 1. *Id.* at 455. To clear that hurdle, a worker "must *at least* play a direct and necessary role in the free flow of goods across borders." *Id.* at 458 (emphasis added; internal quotation marks omitted). Or, "[p]ut another way, transportation workers must be actively engaged in transportation of … goods across borders via the channels of foreign or interstate commerce." *Id.* (internal quotation marks omitted).

Applying this framework to a Southwest Airlines baggage handler at Chicago's Midway Airport, the Court defined the relevant class of workers as those who "load and unload cargo on and off planes traveling in interstate commerce." *Id.* at 457. The Court then concluded that this class of workers is engaged in foreign or interstate commerce because the workers are "intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Id.* at 458-59. The Court explained: "[t]here could be no doubt that interstate transportation is still in progress, and that a worker is engaged in that transportation, when she is doing the work of unloading or loading cargo from a vehicle carrying goods in interstate transit." *Id.* The Court "recognize[d]," however, "that the answer will not always be so plain when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders"—for example, workers who move goods only intrastate in the context of a larger interstate or international supply chain, like "a class of 'last leg' delivery drivers" or a class of "food delivery drivers." *Id.* at 457 n.2.

Third, in *Bissonnette*, the Court further clarified the § 1 inquiry by holding that a worker "need not work in the transportation industry to fall within the exemption." 601 U.S. at 256. But the Court expressly "d[id] not decide" any of the other open questions regarding § 1, including under what circumstances workers "are 'engaged in … interstate commerce' even though they do not drive across state lines." *Id.* at 252 n.2 (ellipses in original); *see also id.* at 256 ("We express no opinion on any alternative grounds in favor of arbitration raised below, including that

petitioners … are not 'engaged in foreign or interstate commerce' within the meaning of § 1 because they deliver baked goods only in Connecticut.").

The *Bissonnette* Court emphasized, moreover, that, under *Saxon*, transportation workers are limited to those "who [are] 'actively' 'engaged in transportation of … goods across borders via the channels of foreign or interstate commerce'" and who "at least play a direct and necessary role in the free flow of goods across borders." *Id.* (quoting *Saxon*, 596 U.S. at 458). In light of those limits, the Court dismissed the suggestion that "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration." *Id.*; *see also id.* ("We have never understood § 1 to define the class of exempt workers in such limitless terms.").

Shortly after deciding *Bissonnette*, this Court denied two petitions seeking review of the question that it had reserved in *Saxon* and *Bissonnette* and that is presented again in this case; Justice Kavanaugh indicated that he had voted to grant one of those two petitions. *Amazon.com, Inc. v. Miller*, No. 23-424, 2024 WL 1706098 (U.S. Apr. 22, 2024); *Domino's Pizza, LLC v. Carmona*, No. 23-427, 2024 WL 1706016 (U.S. Apr. 22, 2024).

B. Factual and Procedural Background.

1. Petitioner Randstad provides staffing solutions for clients across the country. From August 2020 to February 2021, Randstad employed Respondent Ortiz and assigned him to work for the GXO Respondents at their warehouse in San Bernardino County. Pet.App.45a. This warehouse held third-party

products that arrived from outside of California and were stored at the warehouse "for anywhere from several days to a few weeks." Pet.App.7a. Eventually, the products were sent from the warehouse "to end-use consumers and retailers." *Id.* Neither GXO nor Randstad "move[d] Adidas products to or from [the] warehouse." *Id.* "[O]ther … entities" performed those tasks. *Id.*

Ortiz worked as a "PIT / Equipment Operator." *Id.* In that role, Ortiz was responsible for using an electric pallet jack to move already-unloaded pallets of products onto warehouse racks for storage, or back out for others to process and load. *Id.*; *see also* Dist. Ct. Dkt. 31-2 at ¶ 4. He was not "responsible for unloading the products once they arrive[d] or loading them when they [were] scheduled for departure." Pet.App.7a.[1]

2. When Ortiz was hired by Randstad, he signed an agreement to arbitrate "any legal claims belonging to [him] or to [Randstad] that relate to [his] recruitment, hire, employment, client assignments, and/or termination, including, but not limited to, those concerning wages or compensation, consumer reports, benefits, contracts, discrimination, harassment, retaliation, leaves of absence or accommodation for a disability." Pet.App.57a. The Agreement also made clear that any Randstad client for whom Ortiz

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[1] The District Court and Ninth Circuit recognized that Ortiz had vaguely asserted that he "unload[ed] … the packages," but in light of clear testimony from a GXO employee that Ortiz's class of workers did not unload packages from the trucks, both courts "assumed for the sake of its analysis that Ortiz did not do so." Pet.App.7a-8a.

worked—such as GXO—was an "intended third-party beneficiar[y] of th[e] Agreement." *Id.* The parties agreed that the Arbitration Agreement "shall be governed by the Federal Arbitration Act." Pet.App.60a.

3. Despite having signed the Arbitration Agreement, Ortiz filed a "putative class action" in California state court against Randstad and GXO on March 1, 2022. Pet.App.45a-46a. His complaint "alleg[es] various California wage and hour claims; a claim under California's Unfair Competition Law; and a claim under the [California] Private Attorney General Act." Pet.App.46a (internal citations omitted). There is no dispute that "all of [these claims] are covered by the broad language of the arbitration agreement." Pet.App.8a.

Defendants removed the case to federal court under the Class Action Fairness Act and moved to enforce the Arbitration Agreement. Pet.App.46a. The District Court agreed with Ortiz's argument that he qualified as a "transportation worker" and denied Defendants' motion to compel arbitration. In so concluding, the District Court read *Saxon* together with the Ninth Circuit's decision in *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020), to stand for the proposition that employees who "handle" goods during any "step in the interstate travel of goods" are "engaged in foreign or interstate commerce" and thus exempt from the FAA. Pet.App.48a-52a. The District Court further concluded that, even though Ortiz neither carried any goods across state or national boundaries nor loaded or unloaded them at the warehouse, his use of equipment to move the goods short distances within the warehouse constituted a

"step of the interstate travel of [the] goods." Pet.App.50a-51a. The District Court also denied Defendants' request to compel arbitration as a matter of state law, interpreting the Arbitration Agreement to not allow for state-law arbitration. Pet.App.52a-56a.

4. Randstad and GXO each appealed the denial of the motion to compel arbitration. Pet.App.9a; *see* 9 U.S.C. § 16(a)(1)(B). The Ninth Circuit consolidated the appeals and affirmed in relevant part, agreeing with the District Court that Ortiz falls within § 1's transportation worker exemption.[2]

The Court of Appeals recognized that "employees like Ortiz, who do not transport products across great distances and interact with interstate commerce on a purely local basis, present a particularly difficult interpretive issue." Pet.App.10a. The court purported to follow *Saxon*'s two-step approach to resolve the issue. It defined the class of workers as those who performed "exclusively warehouse work" and were "not involved in unloading shipping containers upon their arrival or loading them into trucks when they left the warehouse." Pet.App.15a.

The Ninth Circuit then shifted its legal analysis from Ortiz's work (which was removed from interstate transportation) to the goods Ortiz handled (some of which moved in an interstate supply chain). The court held that, under *Saxon*, § 1 encompasses all workers who "play[] a tangible and meaningful role in [a good's]

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[2] The Ninth Circuit vacated and remanded in part for the District Court to further evaluate Defendants' state-law arguments. Pet.App.26a-43a.

progress through the channels of interstate commerce." Pet.App.12a. And, in the court's estimation, Ortiz "fulfilled an admittedly small but nevertheless 'direct and necessary' role in the interstate commerce of goods" by "processing and storing them"—that is, moving goods around a warehouse—while the goods "awaited further interstate transport." Pet.App.16a. In the court's view, merely handling goods "as they went through the process of entering, temporarily occupying, and subsequently leaving the warehouse," was "a necessary step in [the goods'] ongoing interstate journey to their final destination." *Id.* In short, but for Ortiz's work, the goods could not reach their final destination. *See id.*

The Ninth Circuit rejected Defendants' argument that its approach was overly focused on the goods that workers happen to handle rather than their actual work. In the court's view, "[t]his argument reveal[ed] the extent to which the employers underappreciate how observations about the broader supply chain should inform the court's view of the work performed by the relevant class of employees." Pet.App.20a. Indeed, under the Ninth Circuit's approach, the "broader supply chain" is dispositive: If a class of workers moves or even handles goods as part of an interstate or international supply chain, they are transportation workers—even if they never cross state lines or interact with a vehicle that does.

REASONS FOR GRANTING THE WRIT

The Courts of Appeals are in open conflict over whether and when workers who move or handle goods on a purely *intrastate* basis can be deemed

"transportation workers" "engaged in foreign or interstate commerce" under § 1. The Eleventh and Fifth Circuits focus on the activities of the class of workers, not the movement of goods. As a result, they apply § 1 only when workers are actually engaged in interstate transportation. The Ninth and First Circuits, by contrast, focus on the goods. As a result, they interpret § 1 to encompass all workers who handle goods that are traveling in a broader interstate supply chain—and so sweep in workers far removed from the channels of interstate transportation. Litigation over this frequently recurring issue is proliferating, undermining the FAA's purpose of uniform, speedy, and efficient dispute resolution. The decision below is wrong. And this case is an ideal vehicle for this Court to address the question it left open in *Saxon* and *Bissonnette*. Certiorari should be granted.

I. THIS CASE IMPLICATES A RECOGNIZED, ENTRENCHED CIRCUIT SPLIT.

In the wake of *Saxon*, the Fifth and Ninth Circuits have each acknowledged a deep and persistent circuit conflict regarding whether workers who neither cross state lines nor perform work that is directly engaged with the interstate transportation itself are "transportation workers" exempt from the FAA under § 1. Both courts are right on that point. At least two circuit courts—the Eleventh and Fifth Circuits—have held that those classes of workers do not perform work with a sufficiently direct nexus to interstate transportation. At least two others—the Ninth and First—have held the opposite, reasoning that a worker's handling of a good that is, itself, moving through an interstate supply chain is sufficient. That

split is deeply entrenched. Only this Court can resolve it and provide much-needed guidance on the limits of FAA §1.

1. The Eleventh and Fifth Circuits have heeded this Court's instruction in *Circuity City* and adopted a "narrow construction" of § 1, 532 U.S. at 118—one that requires the worker to cross state lines or directly engage with the means of interstate transportation.

In *Hamrick*, the Eleventh Circuit held that a class of workers engaged in the purely intrastate movement of a good that was traveling in interstate commerce did not fall within § 1, because the workers did not "actually engage in foreign or interstate commerce." 1 F.4th at 1349-50. It is not enough, the court explained, for workers to merely handle or locally transport "*goods* that … have crossed state lines." *Id.* The court reached that result for a simple reason: "Section one," the court recognized, "is directed at what the class of workers is engaged in, and not what it is carrying." *Id.* at 1350. Although *Hamrick* predated *Saxon*, its analysis remains controlling. The Eleventh Circuit resolved a question that *Saxon* subsequently expressly left open—and this petition presents—and thus its decision could not have been limited by *Saxon*. *See, e.g.*, *Nunes v. LaserShip, Inc.*, No. 22-cv-2953, 2023 WL 6326615, at *3 (N.D. Ga. Sept. 28, 2023) ("*Saxon* does not overrule *Hamrick*."); *Carrion v. Miami Lakes AM, LLC*, No. 23-cv-22700, 2023 WL 7299953, at *2-3 (S.D. Fla. Nov. 6, 2023) (treating *Hamrick* as controlling more than a year after *Saxon* issued).

Under the Ninth Circuit's rule in this case, *Hamrick* would have come out the other way. The goods at issue in *Hamrick* were traveling through an interstate

supply chain, and without question, the *Hamrick* drivers' intrastate delivery of those goods was "a necessary step in their ongoing interstate journey to their final destination." Pet.App.16a. Conversely, this case was wrongly decided under the Eleventh Circuit's rule: Like the drivers in *Hamrick*, Ortiz's only connection with interstate transportation is that he handled "*goods* that … have crossed state lines" as part of an interstate supply chain. *Hamrick*, 1 F.4th at 1350.

In *Lopez*, the Fifth Circuit joined the Eleventh in a case involving a driver who "picked up items from a Houston warehouse (items shipped from out of state) and delivered them to local customers." 47 F.4th at 430. The driver, the court observed, was exactly the type of employee *Saxon* had expressly declined to address—*i.e.*, one "'further removed from the channels of interstate commerce or the actual crossing of borders.'" *Id.* at 432 (quoting *Saxon*, 596 U.S. at 457 n.2). Accordingly, the Fifth Circuit undertook to decide "whether, after *Saxon*, a class of workers a step removed from the airline cargo loader in *Saxon*"—like a "last-mile driver" or a warehouse employee who neither loads nor unloads—"is 'engaged in foreign or interstate commerce.'" *Id.* (quoting FAA § 1). As the court recognized, its "sister circuits that have addressed this issue have come out different ways." *Id.*

The Fifth Circuit held that such workers are not covered by § 1. In reaching that result, the court began with this Court's holdings that § 1 covers only those with "'active employment' in interstate commerce," *id.* (quoting *Circuit City*, 532 U.S. at 115-16); that "'transportation workers must be actively

engaged in transportation of … goods across borders via the channels of foreign or interstate commerce,'" *id.* at 433 (quoting *Saxon*, 596 U.S. at 458); and that they "'must at least play a direct and necessary role in the free flow of goods across borders,'" *id.* (quoting *Saxon*, 596 U.S. at 458). Applying those principles, the court concluded that "local delivery drivers" lacked a sufficiently "'direct and necessary role' in the transportation of goods across borders" because they were not "actively engaged in transportation of those goods across borders." *Id.*

In the Ninth Circuit, the facts in *Lopez* would have been enough to bring the workers within the scope of § 1. And in the Fifth Circuit, this case would have come out differently because, like Lopez, Ortiz "interact[ed] with th[e] goods" only after they "arrived at the [GXO] warehouse and were unloaded" by others. Pet.App.14a; *see* Pet.App.7a-8a.

2. The Ninth and First Circuits apply a different rule: They focus on the goods' journey, not the worker's work. According to these courts, § 1 covers any worker who handles a good that is, itself, *in any part* of an interstate journey.

This has long been the rule in the Ninth Circuit. Before this case, in *Rittmann*, the Ninth Circuit considered § 1 claims by plaintiffs who made "'last-mile' deliveries of products from Amazon warehouses to the products' destinations," almost always without crossing state lines. 971 F.3d at 907. The court concluded that these drivers "belong to a class of workers engaged in interstate commerce" under § 1 because "the Amazon packages they carry are goods that remain in the stream of interstate commerce until

they are delivered." *Id.* at 915. The court treated the goods' time in a warehouse as irrelevant; in the court's view, that is "simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of packages' interstate journeys." *Id.* at 916. "[W]orkers employed to transport goods that are shipped across state lines," the court reasoned, are "transportation workers" regardless of whether they cross state lines or directly interact with vehicles that do. *Id.* at 910.

The Ninth Circuit reaffirmed that holding post-*Saxon* in *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135, 1137 (9th Cir. 2023). Indeed, in *Carmona Mendoza*, the court doubled down on the proposition that, where the "goods shipped in interstate commerce [are] not transformed or altered at the warehouses, the entire journey represent[s] one continuous stream of commerce." *Id.*; *see also id.* at 1138 ("Nor does the pause in the journey of the goods at the warehouse alone remove them from the stream of interstate commerce."). Consistent with that principle, the Ninth Circuit held that drivers who delivered pizza ingredients to local, in-state franchisees were exempt from federal arbitration under § 1. *See id.* at 1138. As *Carmona Mendoza* thus made even clearer, the Ninth Circuit treats any movement of goods that have traveled in interstate commerce—before, during, or after their stay at a warehouse—as sufficient to trigger § 1.

Similarly, in *Waithaka*, the First Circuit reasoned that last-mile drivers fall within § 1 because they are "workers moving goods or people destined for, or coming from, other states—even if the workers were responsible only for an intrastate leg of that interstate

journey." 966 F.3d at 22. *Waithaka*, like *Rittmann*, has been reaffirmed post-*Saxon*. *See, e.g.*, *Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228, 234-35 (1st Cir. 2023). And the First Circuit, like the Ninth, treats warehouse stops as part of a continuous chain of interstate or foreign commerce for purposes of § 1. *See Immediato v. Postmates, Inc.*, 54 F.4th 67, 78-79 (1st Cir. 2022) (holding that that chain is broken when "goods come to rest at local restaurants" but recognizing that "the temporary storage of Amazon products in warehouses before drivers deliver them to customers" did not prevent the drivers in *Waithaka* from qualifying for § 1's exemption).

3. Here, the Ninth Circuit acknowledged the split over "the questions raised by cases like *Rittmann* and *Carmona Mendoza*." Pet.App.14a (citing the Eleventh Circuit's *Hamrick* decision and the Fifth Circuit's *Lopez* decision as contrary authority). The court nonetheless claimed that this case does not implicate that split because, according to the Ninth Circuit, the split is limited to "last-mile delivery drivers." Pet.App.15a-16a. To be sure, this question frequently arises in the context of last-mile drivers. But the division of authority has nothing to do with the *facts* of the last-mile cases. It has everything do with a fundamental disagreement about the *legal principles* that govern. If anything, the application of those principles to a case even further removed from the channels of interstate transportation only strengthens the case for certiorari.

As explained above, the Ninth Circuit and First Circuit view the good's journey in interstate commerce as decisive. *See Rittmann*, 971 F.3d at 917 (holding § 1 applicable because the workers "complete the

delivery of goods that Amazon ships across state lines"); *Waithaka*, 966 F.3d at 26 (holding § 1 applicable "[b]y virtue of [the worker's] work transporting goods or people within the flow of interstate commerce" (internal quotation marks and citation omitted)). According to those courts, workers fall within § 1 if they move goods at any stage of an interstate supply chain, because the "packages they carry are goods that remain in the stream of interstate commerce until they are delivered." *Rittmann*, 971 F.3d at 915; *see also Waithaka*, 966 F.3d at 22 (holding that "workers moving goods or people destined for, or coming from, other states—even if the workers were responsible only for an intrastate leg of that interstate journey—were understood to be 'engaged in interstate commerce' in 1925"). As *Carmona Mendoza* put it, "the [good's] entire journey"—including stops "at the warehouses"—"represent[s] one continuous stream of commerce." *Carmona Mendoza*, 73 F.4th at 1137.

That is exactly the legal rule the Ninth Circuit applied here. The court held § 1 applicable—even though Ortiz never transported goods outside the warehouse—because "the relevant goods were still moving in interstate commerce when the employee interacted with them." Pet.App.16a. "Movement over a short distance" at a warehouse, the court said, "is movement nonetheless." Pet.App.18a; *see also* Pet.App.19a ("Though Ortiz moved goods only a short distance across the warehouse floor and onto and off of storage racks, he nevertheless moved them."). The District Court similarly recognized that the rule in the Ninth Circuit is that workers who move goods traveling anywhere in interstate commerce—whether the goods are traveling across a border, within a

warehouse as part of their interstate journey, or in the last mile of their journey—are transportation workers under § 1. Pet.App.50a-52a. The Eleventh and Fifth Circuits have squarely rejected that approach. *See, e.g.*, *Hamrick*, 1 F.4th at 1350 (holding that § 1 "is directed at what the class of workers is engaged in, and not what it is carrying"); *Lopez*, 47 F.4th at 432 (Section 1 covers only workers in "active employment" in interstate commerce).

Contrary to its claim, the Ninth Circuit did not avoid the circuit conflict; it cemented it. The application of its goods-focused approach to a warehouse worker like Ortiz only underscores the implications of the Ninth and First Circuits' approach for the broader economy.

* * *

In the Fifth and Eleventh Circuits, the class of workers must itself be "engaged in foreign or interstate commerce" for § 1 to apply; the fact that a worker handles goods moving through an interstate or international supply chain is insufficient. In those jurisdictions, warehouse workers like Ortiz are not "transportation workers" subject to § 1. But in the Ninth and First Circuits, § 1 covers anyone who handles goods moving continuously in interstate commerce. In those jurisdictions, even workers who *never touch a vehicle*—much less transport goods across state lines—qualify as "transportation workers" "engaged in interstate commerce" and exempt from the FAA. This Court expressly reserved this question in both *Saxon* and *Bissonnette*. *Saxon*, 596 U.S. at 457 n.2; *Bissonnette*, 601 U.S. at 252 n.2. And the division of authority has only solidified in the interim. The

time has come for this Court to resolve this acknowledged split and restore order to § 1 jurisprudence.

II. THE QUESTION PRESENTED IS IMPORTANT AND FREQUENTLY RECURRING.

In passing the FAA, Congress aimed "to reverse the longstanding judicial hostility to arbitration," *Gilmer*, 500 U.S. at 24, and set out a uniform and "liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24; *see supra* at 5-6. This split, however, is generating more and more litigation over the scope of the § 1 exemption. And that proliferating litigation is actively undermining the FAA's core goals. This Court should put an end to the § 1 chaos and take up this important and frequently recurring question now.

To begin, the geographic disparity that a circuit split embodies is antithetical to the uniform federal policy the FAA was designed to impose. Before the FAA, different jurisdictions treated arbitration agreements differently. *See Southland Corp. v. Keating*, 465 U.S. 1, 13-14 (1984) (describing how some state "courts were bound by state laws inadequately providing for" the enforcement of arbitration agreements). But Congress passed the FAA to ensure that arbitration agreements would be respected by courts in California and New Hampshire to the same extent they are by courts in Texas and Georgia. *See id.* at 15 (recognizing that Congress did not make the "right to enforce an arbitration contract … dependent for its enforcement on the particular forum in which it is asserted"). The entrenched split on the question

presented is exactly what the FAA was designed to avoid.

Moreover, uncertainty in the law is particularly damaging in the FAA context because it undermines the benefits of arbitration, which often center on the "economics of dispute resolution." *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009). Parties frequently choose arbitration because it results in "lower costs" and "greater efficiency and speed." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). But to realize these benefits, federal courts must step aside when a dispute is governed by an agreement to arbitrate. The FAA therefore envisions "an expeditious and summary hearing" on motions to compel arbitration. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 23. Extended threshold litigation about the applicability of the FAA "unnecessarily complicate[s] the law and breed[s] litigation from a statute that seeks to avoid it." *Allied-Bruce Terminix*, 513 U.S. at 275. That is precisely what has happened in this case—and is happening across the country as parties and courts grapple with the question *Saxon* and *Bissonnette* left open. *See, e.g.*, *Peter v. Priority Dispatch, Inc.*, 681 F. Supp. 3d 800, 801-03 (S.D. Ohio 2003), *appeal filed*, No. 23-3637 (6th Cir.); *Brock v. Flowers Food, Inc.*, 673 F. Supp. 3d 1180, 1186-88 (D. Colo. 2023), *appeal filed*, No. 23-1182 (10th Cir.). That is especially so given the availability of interlocutory appeals under the FAA. *See* 9 U.S.C. § 16(a)(1)(B).

Worse, until the Court takes up the issue, in the Ninth and First Circuits—as well as in any other circuits that adopt those courts' overly broad approach—workers and their employers will lose the ability to opt into arbitration's efficiencies. In the

modern economy, virtually all goods move in interstate commerce at some point. And almost every business must at least occasionally handle or move such goods. The Ninth and First Circuits' reading of § 1 thus fundamentally transforms the "narrow" exemption the Court described in *Circuit City*, 532 U.S. at 118, into a gaping hole that could nullify otherwise valid arbitration agreements in all manner of employment contracts. Consider, for example, a newspaper-company employee who delivers out-of-state papers and related advertisements to local customers. *Reyes v. Hearst Commc'ns, Inc.*, No. 21-cv-3362, 2021 WL 3771782 (N.D. Cal. Aug. 24, 2021). Or the retail store employee who moves unloaded goods to shelves. Or the warehouse employee who merely affixes labels onto goods without moving them at all. *Bissonnette* made clear that this Court has "never understood § 1 to define the class of exempt workers in such limitless terms." 601 U.S. at 256. But until this Court steps in, that is exactly the rule that prevails throughout New England and the Western United States.

For these and similar reasons, this Court has regularly stepped in to resolve disagreements among the lower courts on the proper interpretation of § 1, *see, e.g.*, *Bissonnette*, 601 U.S. 246; *Saxon*, 596 U.S. 450; *New Prime Inc. v. Olivera*, 586 U.S. 105 (2019)—and of the FAA more broadly, *see, e.g.*, *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023); *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019). It should do so again here. The split over the question presented is ripe for this Court's resolution, with multiple published opinions from Courts of Appeals on each side. *See*

supra Part I; *see also Amazon.com*, 2024 WL 1706098 (Kavanaugh, J., dissenting from denial of petition). And until the Court intervenes, a lack of uniformity will prevail and wasteful, threshold litigation will continue apace—denying parties the speedy, inexpensive dispute resolution for which they contracted and which the FAA was designed to ensure.

III. THE DECISION BELOW IS WRONG.

Review is also warranted because the Ninth Circuit's unduly expansive reading of § 1 contravenes the statutory text and this Court's precedents.

1. Although this Court has twice reserved the question this case presents, *see Saxon* 596 U.S. at 457 n.2, *Bissonnette*, 601 U.S. at 252 n.2, the Fifth Circuit correctly recognized that its answer "flows from the Court's elaboration in *Saxon* … on what it means to be 'engaged in' 'interstate commerce,'" *Lopez*, 47 F.4th at 432. As *Saxon* explained, "to be 'engaged' in something means to be 'occupied,' 'employed,' or 'involved' in it." 596 U.S. at 457. Accordingly, to qualify for § 1's exemption, a class of workers must be "actively" and "directly involved in transporting goods across state or international borders"—either by carrying them across borders or by otherwise being "intimately involved with" cross-border transportation. *Id.* at 457-58. Cargo loaders for Southwest Airlines fit that bill. *Id.* Workers like Ortiz—who move goods entirely within a warehouse and who do not interact with vehicles moving across borders—lack the "active[]," "direct," or "intimate[]" connection with interstate transportation needed to trigger § 1. *Cf., e.g.*, *Tenney Eng'g, Inc. v. United Elec. Radio & Mach. Workers*, 207 F.2d 450, 451-54 (3d Cir.

1953) (en banc) (holding that workers involved in the manufacture of goods are not covered by § 1).

Bissonnette confirmed that this Court meant what it said in *Saxon*. Section 1, *Bissonnette* reiterated, is limited to classes of workers who are "actively," "directly," or "intimately" involved with interstate or foreign transportation. 601 U.S. at 256. "These requirements" mean that it is not the case, for example, "that virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration" under § 1. *Id.* They thus protect against "'any attempt to give the provision a sweeping, open-ended construction,' instead limiting § 1 to its appropriately 'narrow' scope." *Id.* (quoting *Circuit City*, 532 U.S. at 121); *see also id.* ("We have never understood § 1 to define the class of exempt workers in such limitless terms.").

Taking those limitations seriously, this should have been an easy case, because Ortiz belongs to a class of workers who have no "active[]" or "direct[]" role in interstate or foreign transport. *Id.* They move goods only very short distances within a single warehouse. And they do not load, unload, or have any other interaction with interstate transportation itself. Indeed, neither GXO nor Randstad moves goods to or from the warehouse at all—those tasks are carried out by "other … entities." Pet.App.7a. It is not enough that either the goods in question or the company as a whole are involved in interstate commerce. *See Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.) ("[W]orkers must be connected not simply to the goods, but to the act of moving those goods across state or national borders.").

If "pet shop employees" or "grocery store clerks" moving goods that arrived from out of state are outside the scope of § 1, as this Court recently confirmed in *Bissonnette*, 601 U.S. at 256, so too are warehouse workers like Ortiz.

2. The Ninth and First Circuits, by contrast, have endorsed precisely the sort of "sweeping, open-ended construction" of § 1 that this Court has warned against since *Circuit City*. 532 U.S. at 118. Their position flouts both text and precedent by focusing on the transit of the goods and the business of the employer—rather than the work a class of workers actually performs. It also sweeps so broadly as to preclude arbitration in broad swaths of the national economy.

According to both courts, it is enough for the class of workers to play some role in "transporting goods … within the flow of interstate commerce." *Waithaka*, 966 F.3d at 26 (internal quotation marks omitted); *see also Rittmann*, 971 F.3d at 915 (§ 1 applies when workers "carry … goods that remain in the stream of interstate commerce until they are delivered"). But that transforms § 1's textual focus on "the actual work that the members of the class … typically carry out," *Saxon*, 596 U.S. at 456, into a textually unmoored inquiry into the good's journey.

The implications of the Ninth and First Circuits' approach are staggering. According to the decision below, Ortiz is exempt from arbitration simply because he "participate[s] in [an] interstate supply chain" and because "[w]ithout employees like Ortiz, Adidas products that arrived at GXO's warehouse would not be properly processed, organized, stored, or

prepared for the next leg of their interstate journey." *See* Pet.App.19a. But if § 1 covers anyone who merely facilitates interstate transportation in some way, almost any worker could suddenly find himself excluded from arbitration. That rule would sweep in the "shift schedulers" and "those who design Southwest's website" that *Saxon* implied fell outside the exemption. *See* 596 U.S.at 460. It would also reach the retail employees that *Bissonnette* unanimously confirmed it had "never understood § 1" to include. *See* 601 U.S. at 256.

IV. THIS CASE IS AN IDEAL VEHICLE.

Finally, this case provides an uncommonly good opportunity for this Court to answer the question presented, eliminate this longstanding and acknowledged split, and clean up the § 1 caselaw once and for all. The Ninth Circuit's opinion is the latest high-water mark in the § 1 arena. Moreover, for purposes of this appeal, there is no dispute about Ortiz's responsibilities or the class of workers to which he belongs. The District Court and Court of Appeals both assumed that Ortiz belongs to a class of workers who *never* cross state lines nor load or unload vehicles that do so. Pet.App.8a. This petition is thus unafflicted by questions that linger in other cases about *how much* border-crossing is enough. *See, e.g.*, *Mahwikizi v. Uber Tech., Inc.*, No. 22-cv-3680, 2023 WL 2375070, at *3-4 (N.D. Ill. Mar. 6, 2023). There is also no dispute in this case about whether other, non-transportation related responsibilities predominate. *See, e.g.*, *Lopez*, 47 F.4th at 431 (noting that, in addition to last-mile delivery, the workers in question "were tasked with various sales-related tasks … with an emphasis on sales and customer service"). As a

result, this petition presents the ideal opportunity for this Court to clarify the limits of § 1.

CONCLUSION

The petition for a writ of certiorari should be granted.

June 10, 2024

Respectfully submitted,

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