No. 23-1296

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

BRIEF *AMICUS CURIAE* OF THE AMERICAN STAFFING ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The American Staffing Association ("ASA") is the leading voice for the staffing, recruiting, and workforce solutions industry ("staffing industry"). ASA promotes and protects the interests of staffing firms and the temporary and contract employees that they employ. The ASA has over 1,300 staffing industry members who have more than 12,000 offices throughout the United States and represent the majority of revenue in the U.S. staffing industry.

The staffing industry makes a significant contribution to the American economy, providing job and career opportunities for nearly 13 million individuals in 2023. In the same period, over two million Americans were employed by the staffing industry in any given week. More than one-third of staffing industry employees work in occupations requiring higher education and specialized skills. The average wage rate for staffing industry employees exceeds $17 per hour. Most (76%) of these employees work full-time workweeks, and their tenure with a staffing firm can vary from a few days to several months or longer. Employees seek staffing industry employment to increase marketable skills, to obtain a pathway to permanent employment, or because they prefer flexible work schedules. ASA is intimately familiar with the challenges its members face complying with the myriad arbitration and employment laws of the United States and its 50 states.

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[1] Pursuant to Supreme Court Rule 37, *amicus* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for the parties received notice of the intent to file an *amicus* brief at least ten days prior to filing.

ASA has a strong interest in the issues presented by this petition. The lower court's sweeping interpretation of the Federal Arbitration Act ("FAA") Section 1 "transportation worker" exemption jeopardizes the enforceability of arbitration clauses in countless employment relationships across a host of industries, including the staffing industry. Because staffing agencies may refer any one employee to a variety of clients over the course of a single contractual relationship, the Ninth Circuit's rule creates an untenable "on again/off again" quality as to whether the FAA governs the enforceability of arbitration clauses utilized in employment contracts. The Ninth Circuit's choice-of-law analysis portends additional challenges for employers, including staffing agencies, operating at a nationwide scale. Under that analysis (necessitated only by the Ninth Circuit's erroneous construction of Section 1), in cases of identically situated employees performing identical work subject to identical arbitration clauses, the enforceability of those clauses now turns on the state in which that work happens to be performed.

SUMMARY OF ARGUMENT

In addition to the reasons advanced by the Petitioners, the petition for a writ of *certiorari* should be granted for two reasons.

First, the issues raised by the petition implicate countless employment relationships. Arbitration agreements routinely govern employment relationships. Their use developed in response to widely recognized deficiencies in litigation as a mechanism for resolving employment disputes. U.S. Dep't of Lab. & U.S. Dep't of Com., *The Dunlop Commission on the Future of Worker-Management Relations: Final Report* 49–60 (1994). As this Court has repeatedly observed, arbitration offers all parties a host of "real benefits," including lower cost, procedural

flexibility, and expeditiousness. *See Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 122–23 (2001); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30–32 (1991). Empirical studies validate these judicial intuitions.

This bundle of demonstrated benefits depends on the confidence that arbitration agreements will be consistently enforced. Otherwise, the specter of legal uncertainty "would call into doubt the efficacy of alternative dispute resolution procedures adopted by many of the Nation's employers, in the process undermining the [FAA's] proarbitration purposes and 'breeding litigation from a statute that seeks to avoid it.'" *Adams*, 532 U.S. at 123 (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 275 (1995)).

The Ninth Circuit's decision has precisely this deleterious effect. Its "goods handled" test untethers Section 1 from its carefully crafted moorings and accords it a "sweeping open-ended construction" contrary to this Court's express command. *See Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024) (quoting *Adams*, 532 U.S. at 118). Under the Ninth Circuit's unprecedented test, the enforceability of arbitration clauses in countless employment contracts now turns on (i) whether any employee (be she an equipment operator, Pet. 10, or a "grocery store clerk," *Bissonnette*, 601 U.S. at 256) happens to handle goods that have traveled in interstate commerce and (ii) the arbitration laws of the state in which she happens to handle those goods.

These effects undermine the use of alternative dispute resolution in countless employment relationships, including those in the staffing industry. Under the logic of the lower court's decision, the enforceability of the arbitration agreement between a staffing agency and

a temporary worker may ebb and flow depending on the nature of the services provided or the goods that the temporary worker happens to handle during a particular assignment at a particular client (and on a particular day). This expansive interpretation flies directly in the face of the "limited reach" that this Court directed lower courts to give Section 1, *Adams*, 532 U.S. at 115, and saps the long-recognized "national policy favoring arbitration," *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984), of any import whatsoever.

Second, the conflicts-of-law analysis undertaken by the Ninth Circuit (and only necessitated by its erroneous construction of Section 1) further illustrates the unworkability of the Ninth Circuit's rule for companies whose employment relationships cut across state lines. The arbitration agreement at issue in this case contains a choice-of-law clause specifying that the FAA should govern it. Pet. App. 60a. Nonetheless, after (erroneously) deciding that Section 1's exemption precluded the FAA's application, the Ninth Circuit remanded for a determination as to whether state law might nonetheless supply a basis to enforce the arbitration agreement. Pet. App. 35a–36a. As a result, the boundless construction of Section 1 under the Ninth Circuit's "goods handled" test creates a perplexing patchwork of laws both for national employers and for national staffing agencies. Under it, the enforceability of arbitration agreements governing identically situated temporary workers performing identical work for the same company now depends on where that work happens to be performed. *See* Pet. App. 49a–50a. In one instance, the agreement might be enforceable under federal law; in another, it might be enforceable under state law; in a third, the agreement might not be enforceable at all. This legal

regime reinjects precisely the sort of "difficult choice-of-law questions" that this Court's construction of Section 1 has sought to avoid. *Adams*, 532 U.S. at 123 (citing *Egelhoff v. Egelhoff*, 532 U.S. 141, 149 (2001)). It undermines the vitality of company-wide systems of alternative dispute resolution, undercuts uniform federal policy favoring arbitration, and underscores why, unless corrected, the Ninth Circuit's erroneous conclusion on the Section 1 issue will sow discord over the use of arbitration agreements in employment relationships.

ARGUMENT

Nearly a century ago, Congress adopted the FAA "to overcome courts' refusal to enforce agreements to arbitrate," *Dobson*, 513 U.S. at 270 (citing *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stan. Junior Univ.*, 489 U.S. 468, 474 (1989)), and to replace that judicial hostility with a "national policy favoring arbitration," *Southland Corp.*, 465 U.S. at 10. Section 2 of the FAA contains the core of that national policy:

> A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S.C. § 2. Through this provision, Congress "has thus mandated the enforcement of arbitration agreements." *Southland Corp.*, 465 U.S. at 10.

Resting upon Congress's exercise of its constitutional authority to regulate interstate commerce, *Preston v. Ferrer*, 552 U.S. 346, 349 (2008), "the [FAA]

provides for the 'the enforcement of arbitration agreements within the full reach of the Commerce Clause,'" *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003) (per curiam) (quoting *Perry v. Thomas*, 482 U.S. 483, 490 (1987)). Consequently, the FAA's broad mandate is subject to very few "limitations." *Southland Corp.*, 465 U.S. at 10–11. Those limitations do not include a general exemption for arbitration clauses contained in employment contracts. *Adams*, 532 U.S. at 115. Congress has occasionally considered such an exemption, but never enacted one. *See, e.g.*, S. 1376, 118th Cong. § 3 (2023). Indeed, when Congress wishes to cabin the FAA's broad mandate to enforce arbitration agreements, it has acted with exceptional "clarity." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 103 (2012) (collecting statutes); *see, e.g.*, 9 U.S.C. § 402(a).

The only exemption at issue in this case, contained in Section 1 of the FAA, is a "narrow" one. *Bissonnette*, 601 U.S. at 255–56; *Adams*, 532 U.S. at 118. Section 1 provides that the FAA does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Here, it is undisputed that Respondent was not performing work as a "seaman" or "railroad employee." So, Section 1's exemption from the FAA's broad mandate can apply only if Respondent somehow falls within "any other class of workers engaged in foreign or interstate commerce." *See id.*

This Court has interpreted this quoted phrase on two recent occasions.[2] In *Southwest Airlines v.*

[2] In *New Prime v. Oliveira*, 586 U.S. 105, 121 (2019), this Court held that Section 1's exemption did not categorically exclude agreements with independent contractors.

Saxon, 596 U.S. 450, 463 (2022), it held that the phrase encompassed an airline ramp supervisor. To reach that conclusion, the Court articulated a two-step analysis: (1) identify the "class of workers" to which the employee belongs and then (2) determine whether that class of workers is "directly involved in transporting goods across state or international borders." *Id.* at 455–57. Subsequently, last term in *Bissonnette*, this Court addressed "whether a transportation worker must work for a company in the transportation industry" in order to fall within the Section 1 exemption from the FAA's mandate. 601 U.S. at 252. The Court held that the FAA did not contain such an industry-specific requirement. *Id.* at 256.

The unifying principle of this Court's Section 1 jurisprudence—with a through line from *Bissonnette*, through *Saxon* and *Adams* and, ultimately, back to the FAA's very adoption—is this: To protect the movement of goods in interstate commerce by avoiding the disruption of the schemes upon which that commerce depends. *See id.* at 253 (citing *Adams*, 532 U.S. at 121); *Saxon*, 596 U.S. at 458. Consequently, on the one hand, Section 1 of the FAA exempts narrow "classes" of workers who play a "necessary role in the free flow of goods," *Adams*, 532 U.S. at 121, in order to avoid unsettling "specific statutory dispute resolution regimes already" covering them, *Bissonnette*, 601 U.S. at 253. On the other hand, the FAA otherwise provides parties ironclad predictability that arbitration clauses for "'workers in general would be covered' by the FAA." *id.* (quoting *Adams*, 532 U.S. at 121); *see also New Prime*, 586 U.S. at 110–11.

As this Court has developed this principle, it has carefully defined the boundaries of its holdings. For example, *Saxon* recognized that application of its two-

part framework "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." 596 U.S. at 457 n.2 (citations omitted). It identified a circuit split involving "last-leg" or "final mile" drivers and declined to resolve the issues implicated by that split. *Id.* (citations omitted). Similarly, while rejecting the Second Circuit's "transportation industry" requirement, *Bissonnette* was careful not to decide whether the parties resisting arbitration in that case (franchisees owning the rights to distribute locally baked goods in certain parts of Connecticut) actually fell within Section 1's exemption. 601 U.S. at 252 n.2, 256.

As Petitioners explain, this petition implicates the circuit split identified (but not resolved) in *Saxon* and the nuanced intrastate issues that *Bissonnette* left unaddressed. Pet. 14–22. Moreover, as explained here, the lower court's decision involves important issues that supply two additional reasons for granting the petition.

I. The Ninth Circuit's construction of Section 1 untethers this narrow exemption from its carefully designed moorings and undermines the well-recognized benefits of arbitration in employment relationships.

Arbitration represents a widely used method to regulate employment relationships. According to one study, over 60 million employees have contracts that contain arbitration agreements. Seema Nanda, *Mandatory Arbitration Won't Stop Us from Enforcing the Law*, U.S. Dep't of Lab. Blog (Mar. 20, 2023), https://blog.dol.gov/2023/03/20/mandatory-arbitration-wont-stop-us-from-enforcing-the-law. Approximately 65 percent of companies hiring 1,000 or more employees utilize arbitration agreements. Alexander J.S. Colvin,

Econ. Pol'y Ins. *The Growing Use of Mandatory Arbitration* 2, 6 (2018), *available at* https://files.epi.org/pdf/144131.pdf. This includes eighty Fortune 100 companies. Imres S. Szalai & John D. Wessell, The Employee Rts. Advoc. Inst. for L. and Pol'y, *The Widespread Use of Arbitration Among America's Top 100 Companies* 3 (2018), *available at* https://civiljusticeinitiative.org/wp-content/uploads/2019/03/NELA-Institute-Report-Widespread-Use-of-Workplace-Arbitration-March-2018.pdf.

As this Court observed in *Adams* and *Gilmer*, when employment disputes arise, arbitration offers substantial benefits. *See Adams*, 532 U.S. at 122–23; *Gilmer*, 500 U.S. at 30–32; *See also Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 633–34 (1985). Empirical evidence validates these longstanding judicial intuitions:

- *First*, parties can choose rules that will conduct the resolution process and choose arbitrators with expertise in the unique area of law in dispute. *See Mitsubishi Motors Corp.*, 473 U.S. at 633–34 ("[A]daptability and access to expertise are hallmarks of arbitration."). Consistent with this greater procedural freedom, some arbitral institutions have developed tailor-made rules to govern employment disputes. *See, e.g.*, Am. Arb. Assoc., *Employment Arbitration Rules and Mediation Procedures* (2023), *available at* https://www.adr.org/sites/default/files/Employment_Rules_Web.pdf.
- *Second*, arbitration reduces cost access barriers for employees. Employees are seldom responsible for arbitration costs—and even when the employee bears the cost—it is often minimal. *See* John G. Browning & Janey Whitney, *An*

Undeserved Bad Rap? Finding the Fairness in Mandatory Employment Arbitration, 7 Bus. Entrepreneurship & Tax L. Rev. 174, 178–79 (2023) (showing the average arbitration fee was approximately $6,340 and that employees had to pay only 1.4% of claims brought to AAA arbitration between 2017–21); *see also Adams*, 532 U.S. at 122–23 ("Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts.").

- *Third*, arbitration reduces discovery expenses—which account for about 50% of litigation costs. Browning & Whitney, *supra*, at 178–79.
- *Fourth*, fee-shifting is much more commonplace in the arbitral setting. Fee-shifting enables employees with greater opportunities to obtain relief. Jonathan Polland, *Using Cost-Shifting Rules and Statutes to Increase Recoveries in Arbitration*, Am. Bar Assoc. (Mar. 28, 2023), https://www.americanbar.org/groups/litigation/resources/newsletters/alternative-dispute-resolution/using-cost-shifting-rules-statutes-increase-recoveries-arbitration/. This mechanism allows employees to effectively vindicate their statutory and contractual rights through arbitration. *See* Theodore J. St. Antonie, *Labor and Employment Arbitration Today: Mid-Life Crisis or New Golden Age?*, 32 Ohio St. J. on Disp. Resol. 1, 14–16, 25 (2017).
- *Fifth*, arbitration resolves disputes expeditiously. Between 2019–21, arbitration was on average 8% faster for prevailing employee-claimants

than claims brought through litigation. Nam D. Pham & Mary Donovan, NDP Analytics, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration* 15–16 (2022), *available at* https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4077421_code2628166.pdf?abstractid=4077421&mirid=1.

- *Sixth*, arbitration enables a more amicable resolution of the dispute. Following the dispute resolution process, over 75% of employee-claimants remained employed with their employer. Browning & Whitney, *supra*, at 181.

In short, a host of empirical studies validate this Court's longstanding intuitions about the comparative benefits of arbitration as an effective method for resolving employment disputes.

The decision below jeopardizes these demonstrated benefits for countless employment relationships. The Ninth Circuit's "goods handled" test exacerbates uncertainty over the issues left unresolved in *Saxon* and *Bissonnette* to deny parties any predictability over the enforcement of their chosen dispute resolution form. *See generally* Tamar Meshel, *Employment Arbitration: Recent Developments and Future Prospects*, 39 Ohio St. J. on Disp. Resol. 279, 289, 300–02 (2024) (providing numerous instances in which lower courts have wrestled with this Court's interpretation of Section 1 after *Saxon*). This uncertainty cuts across multiple industry sectors. *See id.* at 286–301 (highlighting various court interpretations about what constitutes "engaged in interstate commerce" in light of *Saxon*); *see also* Myriam Gilles, *Arbitration's Unraveling*, 172 U. Pa. L. Rev. 1063, 1088–89 nn.123–30 (2024) (providing additional cases). Absent clearer guidance from this Court as to the proper interpretation of Section 1's

scope, the Ninth Circuit's test leaves employers and employees guessing about whether the FAA will ensure the enforceability of the arbitration agreements chosen to govern their relationships—subjecting those agreements to different treatment depending on the jurisdiction and state. Consequently, the "goods handled" test invites endless litigation over whether the FAA governs virtually every arbitration agreement utilized in any employment relationship. As *Dobson* succinctly put it when shutting down a similar anti-arbitration doctrine, "[w]hy would Congress intend a test that risks the very kind of costs and delay through litigation . . . that Congress wrote the [FAA] to help the parties avoid?" 513 U.S. at 278 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 29 (1983)).

Like employment relationships in virtually every industry, relationships in the staffing industry also suffer under the Ninth Circuit's rule. Employment in that industry typically involves a trilateral structure: a primary employment relationship between the staffing agency and the temporary worker; a service relationship between the staffing agency and the company where the employee actually performs the work (often described in industry parlance as the "client"); and a relationship (generally as a joint or secondary employer) between the client and the temporary worker. *See* Am. Staffing Assoc., *ASA Staffing Law Handbook* 1–11 (2023), *available at* https://americanstaffing.net/wp-content/uploads/2019/10/ASA_2023-Staffing-Law-Handbook.pdf. This case exemplifies a very typical trilateral structure: a relationship between Randstad and Ortiz; a relationship between Randstad and GXO/XPO; and a relationship between Ortiz and GXO/XPO. *See* Pet. 9–10.

Distinct contracts carefully govern the various segments of this trilateral relationship. With respect to the relationship between the staffing agency and the temporary worker, the parties may enter into a single contractual relationship governing multiple assignments or, as is the case here, multiple contractual relationships, each governing a distinct assignment. Pet. App. 45a. With respect to the relationship between the staffing agency and the client company, the staffing agency may assign multiple employees (each subject to a separate contractual relationship) to a single client company; those assignments can cut across state lines. Occasionally, the client company and the temporary worker may enter into an independent agreement regarding some aspect of the relationship. (In other cases, like here, the client company is designated as a third-party beneficiary in the employment contract between the staffing agency and the temporary worker. Pet. App. 57a). As with bilateral employment relationships, the proper operation of this entire model hinges on the certainty that this web of contractual relationships, including the arbitration clauses (or other dispute resolution mechanisms) embedded in those contracts, will be enforced.

Just like its effect on employment relationships generally, the Ninth Circuit's decision eviscerates any predictability in the use of arbitration in staffing relationships. Consider a situation, suggested by this case, where a staffing agency hires a temporary worker for multiple assignments and enters into a single arbitration agreement governing all assignments. Suppose that in her first assignment a temporary worker performs tasks at a client that, even under the broadest construction of Section 1, do not qualify the temporary worker as falling under the Section 1 exemption. For that first assignment, the FAA governs

the arbitration agreement. Suppose that a few days after that first assignment ends, the temporary worker—pursuant to the same arbitration agreement—undertakes a second assignment at a different client. At that second client, she handles goods that have traveled through interstate commerce. Under the Ninth Circuit's "goods handled" test, that temporary worker suddenly transforms into a "transportation worker." In other words, even though the same "contract[] of employment," 9 U.S.C. § 1, governs the entirety of the relationship between the staffing agency and the temporary worker, the FAA acquires a sort of "on again/off again" quality, throwing the predictability of the staffing industry's system of alternative dispute resolution into disarray.

At bottom, the resulting unpredictability for employment relationships across a range of industries, including the staffing industry, flouts this Court's direction about how courts should apply the FAA. In enacting the FAA, "Congress's clear intent . . . [is] to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone*, 460 U.S. at 22 (1983). Arbitration agreements governing employment relationships are designed to align with that Congressional intent. *See Adams*, 532 U.S. at 122–23. The Ninth Circuit's rule "call[s] into doubt the efficacy of [those] alternative dispute resolution procedures." *See id.* at 123. All of this "complexity and uncertainty would breed litigation from a statute that seeks to avoid it." *Bissonnette*, 601 U.S. at 254 (citations and internal quotations omitted). The decision below promises exactly the sort of litigation-breeding complexity and uncertainty against which *Bissonnette* warned.

II. The Ninth Circuit's choice-of-law analysis further illustrates the unworkability of its construction of Section 1 for interstate employers.

The preceding section of this brief explained how the Ninth Circuit's broad construction of the Section 1 exemption carried important implications for employers across a host of industries, including the staffing industry. This section explains how the Ninth Circuit's choice-of-law analysis (only necessitated by its erroneous construction of Section 1) further illustrates the unworkability of its "goods handled" test.

Because it held that Respondent Ortiz fell within the Section 1 exemption, the Ninth Circuit concluded that the FAA did not govern the enforceability of the arbitration agreement between Ortiz and Randstad. Pet. App. 24a–25a. This erroneous conclusion then forced the Ninth Circuit to confront a subsidiary issue: Was the arbitration agreement nonetheless enforceable under state law? Here, the panel divided. A majority concluded that state law still could supply a basis to enforce the arbitration agreement. Pet. App. 31a–36a. The dissent trained on the choice-of-law clause in the arbitration agreement, which specified that the FAA shall apply, Pet. App. 60a; in the dissent's view, this clause meant that state law could not supply a gap-filler, Pet. App. 37a–46a.

The majority's choice-of-law analysis coupled with the panel's capacious construction of Section 1 illustrates why its interpretation of the FAA is so unworkable. It creates a perplexing patchwork of laws for interstate employers. Under that patchwork, the enforceability of arbitration agreements governing identically situated employees performing identical work for the

same client company now depends on where that work happens to be performed.

Another simple scenario illustrates the difficulty: A national staffing agency hires three temporary workers for assignment at the same client. As part of the onboarding, each temporary worker signs an arbitration agreement identical to that signed by Respondent Ortiz. The three temporary workers are assigned to the same client and perform identical work where they do not directly engage in interstate transportation of goods but periodically handle them. There is only one difference: the first temporary worker performs work at a client site in Texas; the second performs the work at a client site in California; the third performs the work at a client site in New Jersey.

Under the Ninth Circuit's choice-of-law analysis, these arbitration agreements are subject to radically different enforceability regimes. With respect to the first Texas-based employee, the FAA governs. As Petitioners explain, Pet. 14–17, the Fifth Circuit has adopted a far narrower construction of the Section 1 "transportation worker" exemption than the Ninth Circuit. With respect to the second California-based employee, the FAA would not govern under the "goods handled" test, but agreement might still be enforceable because California courts do not enforce a categorical bar on the use of arbitration clauses in employment agreements. *See Chamber of Com. of the U.S. v. Bonta*, 62 F.4th 473, 489–90 (9th Cir. 2023). By contrast, in the case of the third New Jersey-based employee, if the Third Circuit were to adopt the "goods handled" test, the agreement might not be even enforceable because that State's law contains a near-categorical bar. *See Atalese v. U.S. Legal Servs. Grp., L.P.*, 99 A.3d 306, 316 (N.J. 2014).

These paradoxical outcomes fly in the face of this Court's guidance about how the FAA should operate. A key purpose of the FAA's nationwide rule was to avoid "difficult choice-of-law questions" that can arise if state law plays too great a role in determining the arbitrability of categories of disputes (like employment disputes). *Adams*, 532 U.S. at 123 (citing *Egelhoff*, 532 U.S. at 149); *see also Dobson*, 513 U.S. at 281. Parochial state-law rules restricting arbitrability frustrate the FAA's commerce-promoting purpose. *Perry*, 482 U.S. at 491; *Southland Corp.*, 465 U.S. at 16. Yet the Ninth Circuit's conflict-of-law analysis, coupled with its broad construction of the Section 1 exemption, accords state arbitrability rules precisely the sort of commerce-frustrating role that decisions like *Adams*, *Dobson*, *Perry*, and *Southland* sought to avoid. That result undermines the vitality of interstate employers' systems of alternative dispute resolution, undercuts uniform federal policy favoring arbitration, and underscores why, unless corrected, the Ninth Circuit's erroneous construction of Section 1 issue will sow discord in employment relationships.

CONCLUSION

For the foregoing reasons, in addition to those offered by Petitioners, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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