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 IN OPPOSITION

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QUESTION PRESENTED

This Court held just two years ago in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), that the contracts of workers who "handle goods traveling in interstate and foreign commerce" but who do not themselves transport goods across borders are exempt from the Federal Arbitration Act. Should this Court reaffirm that recent holding in a case with similar facts on which there is no circuit split?

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INTRODUCTION

Twice in the last two years, this Court has addressed the standards a court must apply when determining whether a class of workers is exempt from the Federal Arbitration Act (FAA). *See Bissonnette v. LePage Bakeries Park St., LLC,* 601 U.S. 246, 256 (2024); *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022). Nonetheless, Petitioners Randstad Inhouse Services, LLC, and Randstad North America, Inc., (collectively, Randstad) pose a question that was already answered in *Saxon*: whether workers who "handle goods traveling in interstate and foreign commerce" but who do not themselves transport goods across borders are exempt from the FAA. They ask this Court to reconsider the question on the basis of a circuit split that, even if it existed, would not be resolved on the facts of this case. Certiorari should be denied.

The Ninth Circuit's decision below is the first time any federal court has applied the framework this Court articulated in *Saxon* to determine whether warehouse workers who move goods through a warehouse in the midst of their interstate journey are exempt from the FAA as "workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Because there is only one appellate decision—not surprising when the applicable standard was articulated just two years ago—there is no circuit split on the question actually decided by the Ninth Circuit in this case, and Randstad points to none.

Left with no circuit split on the only relevant question, Randstad tries to shoehorn this case into what Randstad claims is a circuit split on the question whether *last-mile delivery drivers* are exempt under

§ 1. But the growing consensus among circuit courts after *Saxon* is that workers who transport goods on the last leg of an interstate journey are engaged in interstate commerce and are thus exempt. Randstad points to two circuits that it contends are on the other side of the split from the Ninth Circuit. First, it relies on a plainly inapposite pre-*Saxon* decision from the Eleventh Circuit, which adopted the transportation industry-only rule this Court rejected last term in *Bissonnette* and which did not even decide whether the workers at issue were exempt. Next, it relies on a decision by the Fifth Circuit that is readily distinguishable because the local drivers at issue had substantial customer service roles that the drivers in other cases did not. Neither of those cases creates a split. It is therefore not surprising that this Court only recently denied review of two Ninth Circuit cases that, unlike this case, directly raised the last-mile question, despite the petitioners alleging the very same split with the Eleventh and Fifth Circuits. Review should be denied here as well.

To the extent there is some disagreement among circuits on how to apply *Saxon* to questions about last-mile drivers, this case would not resolve it because the only possible disagreement in the context of last-mile drivers is when the goods' interstate journey ends, not whether the contracts of workers like Mr. Ortiz who handle goods in the middle of their interstate journey are exempt. For that reason, this case would come out the same way in every circuit—Mr. Ortiz would be exempt—even if they diverge on the question of when "interstate commerce" ends.

In an effort to encompass both the cases involving last-mile drivers and this case involving a completely

different class of workers, Randstad has broadened its question presented to ask the very question this Court answered recently in *Saxon*: whether workers are actively engaged in the transportation of goods across borders when they play a "necessary role in the free flow of goods across borders" but do not themselves cross state lines. *Saxon*, 596 U.S. at 458 (internal quotations omitted). Before lower courts have had sufficient opportunity to apply *Saxon*—or *Bissonnette*, which made clear that the industry of the employer is irrelevant to the analysis—this Court should not take up yet another case to answer the same question with only slight variation in the facts.

The Ninth Circuit straightforwardly applied *Saxon* to correctly hold that Mr. Ortiz belongs to a class of workers whose contracts are exempt under § 1. Like the workers in *Saxon*, although Mr. Ortiz himself does not travel interstate, he handles goods at the heart of their journey in foreign or interstate commerce, moving goods that came from abroad or out of state and getting them ready to continue their journey to other states. And, as the Ninth Circuit found, it is not determinative that Mr. Ortiz hands off the goods to someone else to load onto a truck, rather than loading them onto the truck himself like the cargo loaders in *Saxon*.

That application of *Saxon* is supported by this Court's case law interpreting the phrase "interstate commerce" and concluding that even workers who moved goods a short distance along their journey from origin to destination were engaged in interstate commerce, whether or not they were the ones to load the goods on or off a vehicle. And it is also consistent with the intent of the § 1 exemption, which was to

avoid interfering with existing dispute mechanisms for railroad employees—mechanisms that covered warehouse workers.

In short, the Ninth Circuit's routine application of *Saxon* to these facts does not implicate a circuit split—as to warehouse workers or any other type of worker—and is consistent with this Court's precedent and the text and history of the FAA. This Court should deny Randstad's invitation to take up each case involving the application of the § 1 exemption to new job duties and allow lower courts the opportunity to apply *Saxon* and *Bissonnette.*

STATEMENT

A. The FAA's § 1 exemption.

Section 2 of the FAA requires that courts enforce arbitration agreements to the same extent as other contracts, no more, no less. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12 (1967). While this mandate has sometimes been called a "policy favoring arbitration," this Court has made clear that this "federal policy is about treating arbitration contracts like all others, not about fostering arbitration." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022).

There is an important exception to the FAA's primary substantive directive that arbitration agreements be enforced. Section 1 excludes from the Act's coverage the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. When this Court first addressed the § 1 exemption, it held that it applies only to the contracts of workers who play a "necessary role in the free flow

of goods," not workers more generally. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 109, 121 (2001).

This Court has since addressed the scope of the § 1 exemption three times, all in the last five years. First, *New Prime Inc. v. Oliveira* held that a court must decide that the § 1 exemption does not apply before compelling arbitration under the FAA, even if the contract purports to require arbitration of disputes over arbitrability. 586 U.S. 105, 111-12 (2019). *New Prime* also held that, consistent with the way the phrase "contracts of employment" was understood at "the time of the Act's adoption in 1925," *id.* at 114, the § 1 exemption applies to both independent contractors and employees. *Id.* at 121. The Court rejected the defendant's "appeal to [] policy" over text in relying on a "liberal federal policy favoring arbitration agreements" and declined the defendant's invitation to read the statutory exemption more narrowly than its text would allow. *Id.* at 120 (citation omitted).

Second—and most salient for this case—*Saxon* addressed whether ramp supervisors for Southwest Airlines, who worked at least part of the time loading and unloading cargo and baggage on and off airplanes at an airport, but who did not themselves transport goods across state lines, "belong[] to a 'class of workers engaged in interstate commerce'" whose contracts are exempt from the FAA under § 1. 596 U.S. at 453. The Court laid out a two-part analysis for determining whether the § 1 exemption applies. First, it defined "the relevant 'class of workers'" and, second, it "determine[d] whether that class of workers is 'engaged in foreign or interstate commerce'" such that they are subject to the § 1 exemption. *Id.* at 455.

To define the class of workers, the Court focused on "the actual work" the workers do and not what their employer "does generally." *Id.* at 456. The Court concluded that the relevant class of workers was those "who physically load and unload cargo on and off airplanes on a frequent basis." *Id.*

Next, it explained that, for a worker to be "engaged in foreign or interstate commerce," "any such worker must at least play a direct and 'necessary role in the free flow of goods' across borders," or, "[p]ut another way, transportation workers must be actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (first quoting, then citing, *Circuit City*, 532 U.S. at 121). Airline cargo workers meet those requirements because "there 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.* at 458-59 (cleaned up).

Importantly, the Court rejected the argument that workers needed to "physically accompany freight across state or international boundaries" to qualify for the exemption, because the enumerated categories of workers in the FAA were not so limited. *Id.* at 461. The Court explained that, even though the airplane cargo loaders never cross state or international boundaries (or even leave the airport), they "plainly do perform 'activities within the flow of interstate commerce' when they handle goods traveling in interstate and foreign commerce, either to load them for air travel or to unload them when they arrive." *Id.* at 463.

Third, and most recently, *Bissonnette* resolved a circuit split on the question whether the § 1 exemption "is limited to workers whose employers are in the transportation industry." 601 U.S. at 249. This Court held that it is not; rather, whether the exemption applies "focuses on the performance of the work" and whether that work meets the criteria laid out in *Saxon* to be considered engagement in interstate commerce. *Id.* at 253-54.

B. Factual Background.

Respondent Adan Ortiz was hired by Randstad, a staffing company, to work at a California warehouse operated by GXO Logistics Supply Chain, Inc.—now called XPO Logistics—from August 2020 to February 2021. Pet. App. 6a. As the Ninth Circuit described it, "GXO's role in the international supply chain is small but important. It receives Adidas products after they arrive from international suppliers, then processes and prepares them for further distribution across state lines." Pet. App. 7a. In particular, the GXO warehouse where Mr. Ortiz worked received Adidas products, including watches, apparel, and shoes from international locations, stored those products for several days to a few weeks, then shipped those products to consumers and retailers in different states. *Id.*

Mr. Ortiz worked at GXO as a "PIT / Equipment Operator," which involved "unloading and picking up the packages and transporting them to the warehouse racks to organize them," "transport[ing] the packages to the picking section of the warehouse," "assisting Pickers in obtaining packages so they could be shipped out," and "assist[ing] the Outflow department to prepare packages to leave the warehouse for their

final destination." *Id.* Because there was a factual dispute as to whether Mr. Ortiz unloaded shipping containers as part of his work at the GXO warehouse, the courts below assumed he did not for purposes of their initial analyses. Pet. App. 7a-8a.

C. Proceedings Below.

Mr. Ortiz filed this putative class action in California state court against Randstad and XPO, bringing wage and hour and related labor-law claims under state law. Pet. App. 45a-46a. Among other things, Mr. Ortiz alleges that Randstad and XPO fail to give warehouse workers legally required meal and rest breaks, fail to compensate workers for time spent in security checks, and force workers to supply their own necessary tools without reimbursement. *Id.* Randstad removed the case to federal district court pursuant to the Class Action Fairness Act. Pet. App. 46a.

Randstad moved to compel individual arbitration of Mr. Ortiz's claims based on the arbitration agreement he signed as part of his onboarding process, and XPO joined that motion. Pet. App. 8a-9a. Mr. Ortiz opposed, arguing that arbitration could not be compelled because his contract falls under the exemption in § 1 of the FAA. Pet. App. 47a.

The district court agreed, holding that Mr. Ortiz's contract fell within the § 1 exemption. Pet. App. 52a. In doing so, it tracked the two-step analysis this Court laid out in *Saxon*. Pet. App. 48a. First, it defined the relevant class of workers as those who move packages arriving at the warehouse "to the warehouse racks to organize them," and then from those racks to the "picking section of the warehouse," where they would assist other workers in "obtaining packages so they

could be shipped out to individuals and/or stores in various states." Pet. App. 48a-49a. Because the parties disputed whether Mr. Ortiz "personally removed packages from a shipping container," the court assumed that was not one of the duties of the class of workers to which he belonged. Pet. App. 49a. Second, the court concluded that, by "moving pallets of goods in the flow of interstate commerce," that class of workers was "engaged in interstate commerce" and exempt from the FAA. App. 51a-52a. Because arbitration could not be compelled under the FAA, and because it also found that Randstad's contract did not unambiguously provide for arbitration under state law, the district court denied the motion to compel arbitration. Pet. App. 56a.

Randstad and XPO appealed. In a published opinion authored by Judge VanDyke, the Ninth Circuit affirmed the district court's holding that Mr. Ortiz's contract fell within the § 1 exemption. Like the district court, the Ninth Circuit hewed closely to *Saxon*. *See* Pet. App. 10a-16a. It explained that "*Saxon*'s bottom line is that to qualify as a transportation worker, an employee's relationship to the movement of goods must be sufficiently close enough to conclude that his work plays a tangible and meaningful role in their progress through the channels of interstate commerce." Pet. App. 12a.

The Ninth Circuit found that "this case tracks *Saxon* in every important respect." Pet. App. 15a. Like the worker in *Saxon*, Mr. Ortiz belongs to a class of workers who "play a direct and necessary role in the free flow of goods across borders" and who are "actively engaged in the transportation of such goods." Pet. App. 15a-16a (quoting *Saxon*, 596 U.S. at

458) (cleaned up). In particular, "[l]ike Saxon, Ortiz handled Adidas products near the very heart of their supply chain. In each case, the relevant goods were still moving in interstate commerce when the employee interacted with them, and each employee played a necessary part in facilitating their continued movement." Pet. App. 16a.

The Ninth Circuit also addressed the last-mile delivery driver cases that Randstad argues create a circuit split. *See* Part I, *infra*. While the court agreed that those cases raise questions that have not yet been directly addressed by this Court—namely, at what point the interstate journey ends and it can no longer be said that workers are handling goods moving in interstate commerce—it emphasized that "this case does not concern last-mile delivery drivers," "presents no thorny questions about when the interstate transport of goods ends and the purely intrastate transport of the same goods begins," and does not "involve an employee who handles goods at or near the logistical end of an interstate or international supply chain." Pet. App. 15a. Rather, under a straightforward application of the standard laid out in *Saxon*, the Ninth Circuit concluded that Mr. Ortiz is a worker engaged in interstate commerce for purposes of § 1. Pet. App. 24a.[1]

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[1] The Ninth Circuit did not have the benefit of this Court's decision in *Bissonnette* but reached the same conclusion as this Court in that case: that a worker's employer need not be in the transportation industry for their contract to qualify for the § 1 exemption because, under *Saxon*, the focus is on the worker's work. Pet. App. 21a-23a, 23a n.6 (acknowledging that certiorari had been granted in *Bissonnette*). That Randstad's petition heavily relies on *Bissonnette* without either the Ninth Circuit or

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The Ninth Circuit simultaneously issued an unpublished memorandum decision reversing the district court's holding that the text of the agreement did not provide for arbitration under state law and remanding for consideration of whether California law requires arbitration of Mr. Ortiz's claims. Pet. App. 27a-36a. Judge Bea dissented on that question and would have affirmed the district court's denial of the motion to compel arbitration under California law, too. Pet. App. 37a-43a.

REASONS FOR DENYING THE PETITION

I. There is no circuit split on *Saxon*'s application to warehouse workers, or any other class of workers.

Randstad identifies no circuit split on the question whether warehouse workers doing work similar to Mr. Ortiz fall within the § 1 exemption. There is none: The Ninth Circuit is the only circuit to have addressed the question presented by this case.

Without a circuit split on whether warehouse workers with job duties similar to those of Mr. Ortiz are exempt under § 1, Randstad relies entirely on cases addressing a different question: whether last-mile delivery drivers are exempt under § 1. Pet. 14-22. But even its manufactured split on that question falls apart upon closer inspection because it greatly overstates differences among courts' treatment of last-mile drivers.

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any other circuit having an opportunity to consider *Bissonnette*'s application to warehouse workers—or any other class of workers, for that matter—is another reason why certiorari in this case, if warranted at all, would be premature. *See* Pet. 8-9, 14, 24, 26-27.

There is an emerging consensus among circuit courts that the FAA's transportation-worker exemption encompasses last-mile drivers and those who do work closely related to last-mile transportation. Courts reaching that conclusion have explained that exempting last-mile drivers' contracts is consistent both with the understanding of the terms "engaged" and "commerce" at the time the FAA was enacted and with the way in which those terms have been interpreted in other statutes.

For example, in holding that drivers delivering packages from Amazon warehouses to consumers are "engaged in commerce" for purposes of § 1, the Ninth Circuit looked to the ordinary meaning of those words at the time the FAA was enacted. *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 910 (9th Cir. 2020) (citing *New Prime*, 586 U.S. at 113). To reinforce its conclusion that Congress understood last-mile drivers to be engaged in commerce, the court also looked to the way similar language has been interpreted in other statutes, concluding based on that authority and the statutory text "that § 1 exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines." *Id.* at 911-15.

Following *Saxon*, the Ninth Circuit reconsidered its holding in *Rittman* and reached the same conclusion, holding that last-mile drivers who delivered pizza ingredients from a Domino's warehouse to franchisees were engaged in commerce under the § 1 exemption. *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135, 1138 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 1391 (2024); *see also Miller v. Amazon.com, Inc.*, No. 21-36048, 2023 WL

5665771, at *1 (9th Cir. Sept. 1, 2023) (affirming that last-mile Amazon delivery drivers are engaged in interstate commerce under the § 1 exemption after *Saxon*), *cert. denied*, 144 S. Ct. 1402 (2024).

The Ninth Circuit is hardly alone. In a lengthy, carefully reasoned decision, the First Circuit reached the same conclusion as the Ninth Circuit with regard to workers making last-mile deliveries from Amazon warehouses to consumers. *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 26 (1st Cir. 2020). Like the Ninth Circuit, the First Circuit has confirmed that its decision that last-mile deliveries are part of the interstate flow of commerce remains good law after *Saxon*. *See Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228, 237-38 & n.7, 240 (1st Cir. 2023).

Decades ago, the Sixth Circuit easily reached the same conclusion with regard to the quintessential last-mile delivery workers: postal workers. *See Bacashihua v. U.S. Postal Serv.*, 859 F.2d 402, 405 (6th Cir. 1988). The court explained that postal workers, as a class, are responsible for mail moving in interstate commerce—making no distinction between those sorting mail in postal distribution centers, those driving trucks of mail across state lines, and those mail carriers on local routes. *See id.* All postal workers were critical to moving the mail across state lines to its final destination. *See also Muller v. Roy Miller Freight Lines, LLC*, 34 Cal. App. 5th 1056, 1069 (Cal. Ct. App. 2019) (holding that contract of truck driver moving goods intrastate as one leg of goods' interstate journey was exempt under § 1).

Courts—including this one—have been careful to delineate between true last-mile deliveries and local deliveries of goods that once traveled in interstate

commerce. *See Saxon*, 596 U.S. at 457 n.2. The question is whether their interstate journey ended before commencing a new, local journey. Typically, when goods reach the retailer, restaurant, or consumer who ordered them shipped, they depart the stream of commerce. *See Fraga*, 61 F.4th at 239-40. Thus, while drivers ensuring the goods complete the last leg of their interstate journeys are "engaged in interstate commerce," "couriers who deliver[] goods intrastate from restaurants and grocery stores to consumers who ordered those goods from the restaurants and grocery stores [are] not." *Id.* at 239; *see also Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.). That is true even if the local delivery drivers sometimes cross state lines. *See Fraga*, 61 F.4th at 239-40; *Cunningham v. Lyft, Inc.*, 17 F.4th 244, 252 (1st Cir. 2021); *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 17-18 (D.D.C. 2021) (Jackson, J.).

This distinction is not new. *United States v. Yellow Cab Co.* examined whether different types of taxi services implicated interstate commerce for purposes of federal anti-trust law. 332 U.S. 218, 228-32 (1947), *overruled in part on other grounds by Copperweld Corp. v. Ind. Tube Corp.*, 467 U.S. 752 (1984). Where railroads contracted for a taxi company to ferry passengers between rail stations to accommodate their train transfers, that taxi service was "clearly a part of the stream of interstate commerce," as it was "an integral step" in a traveler's overall train journey. *Id.* at 228-29. But where taxis were taking passengers to and from rail stations as part of their normal, local taxi service, that was not. *Id.* at 230-32.

Hewing to *Yellow Cab*, modern courts have held

that ride-hailing drivers, like those working for Uber and Lyft, and local couriers, like those delivering meals or groceries from local establishments, are more like the local taxi drivers this Court held were not working in interstate commerce. *See, e.g.*, *Singh v. Uber Techs., Inc.*, 67 F.4th 550, 562 (3d Cir. 2023); *Cunningham*, 17 F.4th at 250-51; *Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 863-64 (9th Cir. 2021); *see also Wallace*, 970 F.3d at 802.

In support of its contention that courts are divided despite this emerging consensus that true last-mile drivers are exempt from the FAA under *Saxon*, Randstad cites just two circuit court cases, neither of which supports its assertion of a split.

First, Randstad points to the Eleventh Circuit's decision in *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337 (11th Cir. 2021). That case—which was decided before both *Saxon* and *Bissonnette*—did not answer the question whether the last-mile driver's contract was exempt under § 1. *Id.* Rather, the court remanded the question to the district court because it had erred in concluding that the driver, who delivered auto parts from a warehouse to local retailers, was exempt under § 1 without answering what the Eleventh Circuit viewed as the proper question: whether the worker belongs to a class of workers who are employed "in the transportation industry" and who "actually engages in foreign or interstate commerce." *Id.* at 1351.

Of course, *Bissonnette* has since overruled the Eleventh Circuit's holding that the district court erred by failing to consider whether the workers were in "the transportation industry." 601 U.S. at 256. Indeed, the rule adopted by the Second Circuit in *Bissonnette* and reversed by this Court was directly

drawn from the Eleventh Circuit's holding in *Hamrick*. *See Bissonnette v. LePage Bakeries Park St., LLC*, 49 F.4th 655, 661 (2d Cir. 2022) (quoting *Hamrick*, 1 F.4th at 1349). In any event, even if *Hamrick* is still good law after *Bissonnette*, the Eleventh Circuit's observation that just because the goods had previously traveled interstate does not mean the workers delivering those goods are "actually engaged in interstate commerce" is entirely consistent with the holdings of other courts.

Next, Randstad points to *Lopez v. Cintas Corp.*, 47 F.4th 428, 433 (5th Cir. 2022), where the Fifth Circuit found that a worker who provided customer service and picked up and locally delivered uniforms from a warehouse was too far removed from the interstate movement of goods to be engaged in interstate commerce for purposes of § 1. In doing so, the court emphasized that "unlike either seamen or railroad employees, the local delivery drivers here have a more customer-facing role" because customer sales and service were major parts of their job—duties most last-mile delivery workers do not have. *Id.* at 431-32, 433. Thus, on the facts presented in the cases in the Ninth and First Circuits—where there was no finding that delivery drivers engaged in substantial customer service—it is likely that the Fifth Circuit would have reached the same conclusion as those courts.[2]

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[2] Indeed, in *Fraga*, the First Circuit remanded for the district court to determine, among other things, whether the worker spent more time on consumer-facing tasks or last-mile deliveries of materials shipped from out of state. *See* 61 F.4th at 240-41. As such, it is likely the First Circuit would agree with the Fifth Circuit that a worker who performs mostly customer-facing

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In short, there is no real split in authority after *Saxon* on the question whether true last-mile drivers are exempt under § 1. For that reason, it is no surprise that this Court has consistently denied review—both before and after *Saxon*—of the Ninth Circuit's application of the § 1 exemption. Indeed, just last term, this Court denied petitions for review in both *Carmona* and *Miller* that relied on the same purported split with the Eleventh Circuit in *Hamrick* and the Fifth Circuit in *Lopez* that Randstad alleges here. 144 S. Ct. 1391 (2024); 144 S. Ct. 1402 (2024). Because nothing has changed in the months since those petitions were denied, certiorari is not warranted here, either.

II. Even if there were disagreement among the circuits, this case would not address it.

To the extent there is a circuit split on the application of *Saxon* to last-mile delivery drivers—which there is not—this case would be a uniquely bad vehicle to address it. Addressing whether Mr. Ortiz's job duties as a warehouse worker bring his work within the § 1 exemption would simply not resolve the question whether workers with entirely different jobs who are involved in an entirely different stage of interstate commerce are subject to the exemption.

As Judge VanDyke pointed out in the Ninth Circuit opinion below, the focus of the last-mile delivery driver cases is establishing when a good's journey in interstate commerce has come to an end. Pet. App. 14a-15a (explaining that last-mile driver cases "involve an employee who handles goods at or

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tasks, as opposed to job duties that are "necessary" to "the free flow of goods across borders," is not exempt.

near the logistical end of an interstate or international supply chain"). For example, in *Lopez*, the Fifth Circuit determined that, when goods that had traveled in interstate commerce reached their destination—a warehouse—and were unloaded there, a worker who later came to the warehouse and picked up the goods for a purely local delivery was not engaged in interstate commerce. 47 F.4th at 433; *see also id.* at 432 (emphasizing that the class of workers at issue "enter the scene after the goods have already been delivered across state lines").

But here, there is no question that the Adidas products Mr. Ortiz handled in the GXO warehouse were still very much in the midst of interstate transit when he moved them: They had arrived at the warehouse from out of state or overseas, and Mr. Ortiz moved them and prepared them for their onward journey across state lines. Pet. App. 7a-8a, 15a.

Thus, even under Randstad's reading of *Lopez* and *Hamrick*, Mr. Ortiz's contract would be exempt under § 1. Unlike the local delivery drivers in those cases, who interacted with goods *after* they were done crossing state lines, Mr. Ortiz moved goods in the middle of their interstate journey *while* they were still traveling interstate. Because the Fifth and Eleventh Circuits' relevant analyses also come out in Mr. Ortiz's favor, this is not the case to resolve any disagreement that exists on the application of *Saxon* to last-mile delivery drivers.

Illustrating that point, Randstad's arguments for why Mr. Ortiz's work does not fall within the exemption are entirely irrelevant and make no sense in the context of last-mile delivery drivers. For

example, Randstad argues that the § 1 exemption does not apply to the contracts of workers like Mr. Ortiz who "move goods only very short distances within a single warehouse." Pet. 26; *see also* Pet. 25 (arguing that exemption does not apply to the contracts of workers "who move goods entirely within a warehouse and who do not interact with vehicles moving across borders"); *see also* Pet. App. 16a-17a (describing and rejecting Randstad's argument that Mr. Ortiz was not exempt because "he did not move goods anywhere but within the facility"). Yet, that argument would not apply to the last-mile drivers in the cases that supposedly make up Randstad's circuit split, who use vehicles to move goods between warehouses and other locations, not within a warehouse.[3]

Similarly, Randstad argues that the exemption does not apply to Mr. Ortiz's contract because "neither GXO nor Randstad moves goods to or from the warehouse at all"—that is, that his employer's work is done within one location. Pet. 26. But, of course, the employers in the cases that make up the purported circuit split *do* move goods from warehouses; that is the last-mile drivers' whole job. *See, e.g.*, *Lopez*, 47 F.4th at 432 (defining class of workers as those who "pick[] up items from a local warehouse and deliver[] those items to local customers"). Thus, a decision on Randstad's central arguments would not resolve its purported circuit split as to *Saxon*'s application to

[3] Randstad's argument is also foreclosed by *Saxon*, as the ramp supervisors at issue there moved goods only within the airport. *See* 596 U.S. at 454.

last-mile delivery drivers.[4] Indeed, the main factual commonality between the last-mile driver cases on which there is a purported circuit split and this case is that the workers do not themselves necessarily travel interstate, and the Court has already confirmed in *Saxon* that is not dispositive in the § 1 analysis.

In short, to the extent Randstad wants the Court to resolve its purported circuit split on last-mile drivers, a decision addressing the warehouse workers in *this* case would not do so.[5]

III. *Saxon* already answered Randstad's question presented.

In an attempt to justify the relevance to this case to any split on the application of the exemption to last-

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[4] Randstad's argument on this point is now clearly foreclosed by *Bissonnette*, which held that the worker's employer need not be in the business of transportation. 601 U.S. at 256.

[5] It is puzzling that Randstad asserts that this case is "an unusually good vehicle, because there is no dispute about Ortiz's role." Pet. 5. To the contrary, Mr. Ortiz's job duties have been actively disputed at all levels of this case. In the district court, Mr. Ortiz testified to "unloading and picking up packages," but the employer asserted that people in Mr. Ortiz's position "are not responsible for unloading products." Pet. App. 7a-8a. As a result, the district court "assumed for the sake of its analysis" that Mr. Ortiz did not unload packages from shipping containers, finding that fact not to matter for the ultimate outcome of the case. Pet. App. 8a. Mr. Ortiz intends to continue to press the argument—as he did in the courts below—that his testimony supports a finding that he engaged in unloading goods that had traveled in interstate commerce, just like the worker in *Saxon*. *See* Pet. App. 7a-8a. As a result, a decision by this Court based on the district court's assumed facts may not ultimately affect the outcome of Mr. Ortiz's case, let alone the cases of workers with different job duties.

mile drivers, Randstad defines its question presented at a high-level of generality, asking not whether the exemption applies to Mr. Ortiz and other warehouse workers like him, but whether "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," are subject to the exemption. Pet. i.[6]

This Court already answered that question when it decided *Saxon*. It explained that, to be exempt, a worker must be "actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." 596 U.S. at 458 (quotation omitted). And it confirmed that the contracts of workers who handle goods as they travel in interstate commerce but who do not themselves transport those goods across borders or travel interstate are exempt under § 1. *See id.* at 461. There is therefore no reason to grant review to answer that question again.

Indeed, the only difference between the question presented by Randstad and the question answered in *Saxon* is a semantic one: Randstad asks the Court to decide whether the exemption applies to workers who

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[6] To resolve its purported circuit split, Randstad would have had to ask this Court a far different and more specific question presented than it did here. It would look more like the question presented in *Carmona*, which did involve last-mile drivers: "Whether local delivery drivers—i.e., workers who make in-state deliveries of goods in response to in-state orders, and play no role in transporting those goods across borders—are nevertheless 'engaged in foreign or interstate commerce' for purposes of Section 1 of the Federal Arbitration Act?" Pet. for Writ of Cert. i, *Domino's Pizza, LLC v. Carmona*, No. 23-427 (U.S. Oct. 19, 2023). But Randstad cannot ask that question because the facts of this case do not present it.

"directly engage with interstate transportation," while *Saxon* concluded—and *Bissonnette* affirmed—that it applies to workers who are "actively engaged in [interstate] transportation." *Bissonnette*, 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458) (cleaned up); *see also* Pet. 25 (admitting that the answer to its question presented "flows from the Court's elaboration in *Saxon* . . . on what it means to be 'engaged in' 'interstate commerce'") (quotation omitted). In other words, *Saxon* already answers Randstad's question presented.

At most, then, the only question in this case is whether the Ninth Circuit properly applied *Saxon* to the facts presented here. That is, whether warehouse workers like Mr. Ortiz who pick up packages that have been unloaded by their coworkers from shipping containers that traveled in foreign commerce, organize and move the packages to a different part of a warehouse, and then prepare the packages for other coworkers to load on trucks for shipping to their final destinations in various states are actively engaged in transportation of goods in interstate commerce. There is no need for this Court to review the Ninth Circuit's routine application of *Saxon* to the slightly different facts in this case.

IV. The decision below was a routine and correct application of *Saxon*.

Review is also not warranted because the Ninth Circuit correctly applied the principles laid out by this Court in *Saxon* to the facts of this case to conclude that Mr. Ortiz's contract is exempt under § 1 because he belongs to a class of workers "actively engaged" and "intimately involved with" interstate and foreign transportation. Pet. App. 16a.

The court carefully considered and applied the two-part test from *Saxon*, concluding that, like the class of cargo loaders and unloaders in that case, the class of warehouse workers to which Mr. Ortiz belonged "fulfilled an admittedly small but nevertheless 'direct and necessary' role in the interstate commerce of goods." *Id.* As Judge VanDyke explained, "[l]ike Saxon, Ortiz handled Adidas products near the very heart of their supply chain," while "the relevant goods were still moving in interstate commerce." *Id.* "Saxon ensured that baggage would reach its final destination by taking it on and off planes, while Ortiz ensured that goods would reach their final destination by processing and storing them while they awaited further interstate transport." *Id.* Likewise, both "were "actively engaged in the interstate commerce of goods": "Saxon handled goods as they journeyed from terminal to plane, plane to plane, or plane to terminal, while Ortiz handled them as they went through the process of entering, temporarily occupying, and subsequently leaving the warehouse—a necessary step in their ongoing interstate journey to their final destination." *Id.*

In short, both Mr. Ortiz and Ms. Saxon "handle[d] goods traveling in interstate and foreign commerce." *Saxon*, 596 U.S. at 463. The only difference between their jobs for the purposes of the § 1 analysis is that, rather than loading goods himself like Ms. Saxon, Mr. Ortiz handed the goods off to another worker to load. In other words, instead of just one worker taking Adidas products that arrived in a shipping container and moving them through the warehouse and then loading them on a truck, that work was divided

among several different workers, all of whom played a "direct and necessary" role in the products' movement in interstate commerce. The fact remains: Without the involvement of each of those workers, including Mr. Ortiz, the goods would not be able to continue on their journey across state lines.

For this reason, the fearmongering by Randstad and its amici about all retail shelf-stockers being exempt under the Ninth Circuit's reasoning is overblown. The key to the Ninth Circuit's analysis below—just like this Court's analysis in *Saxon*—was that the Adidas products at issue were undoubtedly still in the middle of their interstate journey at the time Mr. Ortiz interacted with them, and his handling of the goods was necessary to move them along toward their destinations in other states. *See* Pet. App. 19a. In other words, the Court did not focus on the fact that he handled goods that *had* traveled in interstate commerce, as Randstad suggests; it emphasized that he handled goods as part of their *current travel* in interstate commerce, just like the worker in *Saxon*. Pet. App. 15a-16a. And that emphasis on Mr. Ortiz's personal role in the goods' interstate travel is entirely consistent with the case law holding that workers who interact with goods after their interstate journey ends, like the food delivery workers in *Wallace* or the "pet shop employees" and "grocery store clerks" mentioned in *Bissonnette*, are not engaged in interstate commerce.

The Ninth Circuit's reasoning is also in line with what it meant to be engaged in interstate commerce at the time the FAA was passed, which included not just workers who themselves physically transported or loaded and unloaded goods, but also workers who

moved goods closer to their final destination after they had been transported and unloaded by someone else. For example, in *Rhodes v. Iowa*, 170 U.S. 412, 426 (1898), this Court held that moving goods from a train platform to a freight warehouse at the train station "was a part of the interstate commerce transportation," even though the worker who moved the goods was not involved in unloading them from the train, and even though the goods were stored in the warehouse temporarily before being turned over to the recipient. The Court defined interstate commerce as "the continuity of shipment of goods from one state to another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract." *Id.* at 419; *see also id.* at 415 (defining interstate commerce as beginning at "the moment of shipment" and ending with "the delivery of the goods to the consignee at the place to which they were consigned"); *Covington Stock-Yards Co. v. Keith*, 139 U.S. 128, 136 (1891) (holding that transportation "begins with [the item's] delivery to the carrier to be loaded upon its cars, and ends only after [it] is unloaded and delivered, or offered to be delivered, to the consignee"). In other words, goods that have been shipped but not yet delivered to their destination, like the Adidas products here, are being transported in interstate commerce, but goods that have already been delivered to their destination, like products in a grocery store or ingredients at a restaurant, are not.

Thus, a worker moving an item even a short distance on the train platform was participating in the goods' interstate journey because the worker moved those goods closer to "the point of consignment" while they were still in transit. *Rhodes*,

170 U.S. at 419; *see also Puget Sound Stevedoring Co. v. Tax Comm'n of State of Washington*, 302 U.S. 90, 93 (1937) (holding that longshoremen who transported goods that had been unloaded from a ship were engaged in foreign or interstate commerce even if their work was confined to the dock and another worker unloaded the goods from the ship), *overruled on other grounds by Dep't of Revenue v. Ass'n of Wash. Stevedoring Cos.*, 435 U.S. 734 (1978).

Here, as in *Rhodes*, the goods that Mr. Ortiz directly handled were still part of interstate commerce, and thus, by definition, he was "actively engaged" in interstate commerce when he moved them. Even if the distance the goods traveled was short, his moving them that short distance was necessary so they could be loaded on trucks to go to their final destinations, just like moving goods from a train platform to a storage facility to await pickup. And, as this Court has explained, temporary resting places for goods in interstate or foreign commerce to await further transport—like the freight room in *Rhodes* or the warehouse here—are "wellnigh as essential to commerce as ships and vessels." *Ex parte Easton*, 95 U.S. 68, 75 (1877).

That Mr. Ortiz played an integral part in the interstate transportation of goods is also confirmed by the way Congress defined interstate transportation at the time the FAA was passed. In the Interstate Commerce Act, as amended by the Transportation Act of 1920, Congress defined interstate "transportation" broadly to include not just transportation itself, but "*all* services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of

property transported." Pub. L. No. 66-152 § 400(3), 41 Stat. 456, 475 (1920) (emphasis added); *Cleveland, C., C. & St. L. Ry. Co. v. Dettlebach*, 239 U.S. 588, 595 (1916) (holding that the Interstate Commerce Act applied to "defendant's responsibility as warehouseman").

That definition is particularly important here because, as this Court explained in *Bissonnette*, the § 1 exemption was enacted to avoid a conflict between the FAA and "specific statutory dispute resolution regimes already cover[ing] seamen and railroad employees." 601 U.S. at 253. In turn, those resolution schemes, including the Transportation Act of 1920, defined their scope by reference to the Interstate Commerce Act. *See* Pub. L. No. 66-152, § 300(1), 41 Stat. 456, 469 (1920). Thus, at the time the FAA was enacted, the Transportation Act of 1920 gave the Railroad Labor Board jurisdiction over disputes between railroad carriers engaged in "transportation" as defined by the Interstate Commerce Act and their workers, including warehouse workers. *See Int'l Ass'n of Machinists v. Atchinson, Topeka & Santa Fe Ry.*, Decision No. 2, 1 R.L.B. 13, 14-22, 28 (1920) (Railroad Labor Board ruling on wage increases for numerous categories of railroad employees, including "[s]tation, platform, warehouse, transfer, dock, pier, storeroom, stock room, and team-track freight-handlers or truckers, or others similarly employed").

As a result, the exemption for "railroad employees" in the FAA, which was intended to exempt workers within the scope of the Railroad Board's jurisdiction to avoid "unsettling" its dispute resolution scheme,

Bissonnette, 601 U.S. at 253 (alteration omitted), included warehouse workers. That further supports the Ninth Circuit's conclusion that the phrase "any other class of workers engaged in foreign or interstate commerce" should be interpreted to include warehouse workers. *See Saxon*, 596 U.S. at 457-59.

In short, because the Ninth Circuit below engaged in a faithful and routine application of *Saxon* that is consistent with the text of the Act, its history, and this Court's precedent, review is not warranted here.

CONCLUSION

The petition should be denied.

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