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

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

This Court has twice reserved the question whether § 1 applies "when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders" than the loading and unloading of planes in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457 n.2 (2022); *see also Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252 n.2 (2024). The courts of appeals are in acknowledged and entrenched conflict over how to answer that question. At least two circuits focus on the *work* that a particular class of workers is engaged in, and whether that work has a sufficiently "direct" and "intimate" tie to interstate or foreign transportation. At least two others—including the Ninth Circuit here—look instead to whether the workers interact with *goods* that travel across borders, even if the workers' ties to that cross-border movement are attenuated.

Only the former approach honors the FAA's text (which focuses on the work performed) and the guidance this Court's past cases have provided (which emphasizes that § 1 is only a narrow exception to the FAA's general requirement of respect for arbitration agreements). Regardless, this Court's resolution of the split is urgently needed to vindicate the FAA's twin goals of geographic uniformity and the avoidance of protracted threshold litigation.

Contrary to the arguments that pervade Respondent Ortiz's Brief in Opposition, the split over *how* to assess § 1 claims by classes of workers further removed from the channels of interstate or foreign commerce is both real and implicated here.

Regardless of any factual variations among individual cases, that core legal question applies across the board and demands an answer. The petition should be granted.

ARGUMENT

I. ORTIZ'S ATTEMPTS TO DISPUTE THE SPLIT'S EXISTENCE AND APPLICABILITY FAIL.

1. As Randstad's petition explained, a split exists over the proper method for assessing § 1 exemption claims. *See* Pet.14-22. In the Eleventh and Fifth Circuits, the key "focus [is] on what a class of *worker* must be engaged in doing and not the *goods*" with which they interact. *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1349 (11th Cir. 2021); *see also Lopez v. Cintas Corp.*, 47 F.4th 428, 433 (5th Cir. 2022). By contrast, in the Ninth and First Circuits, it suffices if the class of workers interacts with "goods that remain in the stream of interstate commerce until they are delivered." *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 915 (9th Cir. 2020); *see also Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 26 (1st Cir. 2020). The Fifth and Ninth Circuits have both recognized this disagreement. *See Lopez*, 47 F.4th at 432 (citing *Rittmann* and *Waithaka* in noting that "[o]ur sister circuits … have come out different ways"); Pet.App.14 (acknowledging "different conclusions" on this issue).

2. Ortiz, however, boldly disagrees with the courts themselves over whether a split exists, insisting that there is instead an "emerging consensus among circuit courts that the FAA's transportation-worker exemption encompasses last-mile drivers …." BIO 12. His attempt to discount the Eleventh and Fifth Circuits' side of the split, however, rests on misreading

those cases as turning on factors other than the proper legal framework for addressing § 1 claims.

For example, Ortiz suggests that the Eleventh Circuit's decision in *Hamrick* actually rested on the argument—subsequently rejected by this Court in *Bissonnette*—that workers can fall within § 1 only if they work in a transportation industry. BIO 15. That argument plucks language from *Hamrick* out of context. While *Hamrick* treated that requirement as *one* of "two elements for [§ 1's] exemption to apply," 1 F.4th at 1346, that element was undisputed, because the workers' employer in that case was "in the business of delivering goods," *id.* at 1340.

Instead, *Hamrick*'s analysis turned solely on the *other* element it identified: whether the class of workers "actually engage[s] in the transportation of goods in interstate commerce." *Id.* at 1346. It was in that context that the Eleventh Circuit addressed "the goods at issue," which "originated in interstate commerce and were delivered, untransformed, to their destination." *Id.* at 1351 (brackets omitted). As the court explained, the district court's reliance on the workers' interaction with those goods—the very approach taken by the Ninth and First Circuits, *see, e.g.* Pet.App.16a (finding conclusive that Ortiz's job was "a necessary step in [the goods'] ongoing interstate journey to their final destination")—"was error," because it "focused on the movement of the goods and not the class of workers." *Hamrick*, 1 F.4th at 1351; *see also id.* at 1350 ("Section one is directed at what the class of workers is engaged in, and not what it is carrying.").

Nor does it matter that *Hamrick* predated *Saxon* and *Bissonnette*. *See* BIO 15. As Randstad noted—and Ortiz ignores entirely—post-*Saxon* decisions within the Eleventh Circuit have continued to treat *Hamrick* as binding. *See* Pet.15 (citing *Nunes v. LaserShip, Inc.*, No. 22-cv-2953, 2023 WL 6326615, at *3 (N.D. Ga. Sept. 28, 2023), and *Carrion v. Miami Lakes AM, LLC*, No. 23-cv-22700, 2023 WL 7299953, at *2-3 (S.D. Fla. Nov. 6, 2023)). That makes sense, because *Saxon* expressly declined to resolve the issue *Hamrick* addressed, which is how to determine whether workers further removed from the actual transport of goods across state or national boundaries fall within § 1. *See Saxon*, 596 U.S. at 457 n.2. And because *Bissonnette*, too, explicitly left that question open, *see* 601 U.S. at 252 n.2, 256, it left *Hamrick*'s controlling weight within the Eleventh Circuit untouched as well.

Ortiz's effort to minimize *Lopez* fares no better. He claims that the Fifth Circuit held that § 1 did not apply because the workers in that case had some customer-facing roles that differed from pure delivery driving, rather than because the court focused on the workers' work. *See* BIO 16. But the basis of *Lopez*'s holding was that "local delivery drivers" are not "actively engaged in transportation of … goods across borders," because "[o]nce the goods arrived at the Houston warehouse and were unloaded, anyone interacting with those goods was no longer engaged in interstate commerce." 47 F.4th at 433. That is precisely the case here. Once other employees unloaded the goods at the GXO warehouse, "anyone interacting with those goods" within the warehouse "was no longer engaged in interstate commerce." *See id.* So Ortiz's § 1

exemption claim necessarily would have failed in the Fifth Circuit.

Although the *Lopez* court also noted the workers' "more customer-facing role," it did so only as a factor that "further underscore[d]" the conclusion it had already reached: "that this class [of workers] does not fall within § 1's ambit." *Id.* What matters in the Fifth Circuit—as in the Eleventh, but unlike in the Ninth and First Circuits—is how closely the workers' work is tied to interstate transportation, not the overall journey the goods take.

3. Ortiz's second attempt to evade the acknowledged split follows the lead of the Ninth Circuit below, *see* Pet.App.15a, in asserting that irrelevant factual variations mean that any split is not implicated here. *See* BIO 17-20. But the dispute over the governing legal principle is the same regardless of whether the worker in question works in a warehouse or as a local delivery driver. Either way, the dispositive legal question is the very one reserved in both *Saxon* and *Bissonnette*: how should courts assess § 1 claims "when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders"? *Saxon*, 596 U.S. at 457 n.2; *see Bissonnette*, 601 U.S. at 252 n.2.

Likewise, contrary to Ortiz's suggestion, neither side of the split's answer to that question varies based on whether the goods at issue move across borders both before and after the class of workers handle them, or whether the workers only "'handle[] goods at or near the logistical end of an interstate or international supply chain.'" BIO 17-18 (quoting Pet.App14a-15a). The Ninth Circuit has already squarely held that § 1

covers *both* types of workers. *See Rittmann*, 971 F.3d at 909-19; Pet.App.9a-24a. And the Eleventh and Fifth Circuit's "focus on what a class of *worker* must be engaged in doing and not the *goods*" renders irrelevant whether those goods cross state lines before the employee handles them, after, or both. *See Hamrick*, 1 F.4th at 1349. The goods here, just like the goods in *Lopez*, had completed an interstate journey upon being unloaded, such that those interacting with them from that point on within the warehouse were "no longer engaged in interstate commerce." 47 F.4th at 433. That the goods might make a new journey in interstate commerce at some point in the future makes no difference. Neither does any agreement that might exist among the circuit courts about how to answer *other* questions that arise under § 1, such as the status of ridesharing drivers or other gig economy workers who typically work intrastate but occasionally transport goods or passengers across borders. *See* BIO 14-15.

II. ORTIZ CONCEDES THE IMPORTANCE OF THE QUESTION PRESENTED.

As Randstad's petition explained, not only is the split over the Question Presented real, it also really matters. *See* Pet.22-25. At the outset, the very existence of a split over FAA coverage undermines that statute's goal of setting out a uniform federal rule under which the "right to enforce an arbitration contract" is not "dependent … on the particular forum in which it is asserted." *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984). Moreover, the split here is particularly pernicious because it "unnecessarily complicate[s] the law and breed[s] litigation from a statute that seeks to avoid it." *See Allied-Bruce*

Terminix Cos. v. Dobson, 513 U.S. 265, 275 (1995). Motions to compel arbitration are supposed to be resolved via "an expeditious and summary hearing." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). But the question this Court left open in *Saxon* and *Bissonnette* has spawned a proliferation of burdensome threshold wrangling that further undermines the FAA's goals. *See* Pet.23 (collecting cases).

Ortiz disputes none of this. Aside from his incorrect claim that the split does not exist or matter in this case, Ortiz never denies the issue's importance. That is for good reason. The Question Presented is one that recurs frequently, one whose implications extend to every business whose employees at least occasionally handle goods that move in interstate commerce, and one for which this Court's answer is urgently needed.

III. ORTIZ'S MERITS ARGUMENTS OVERREAD *SAXON* AND IGNORE THIS COURT'S GUIDANCE THERE AND IN *BISSONNETTE*.

1. Ortiz insists that "*Saxon* already answered Randstad's question presented" by supposedly "confirm[ing] 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." BIO 20-21. *Saxon*, of course, held no such thing. Rather, once again, the Court there explicitly declined to decide the proper inquiry and result where, as here, "the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders" than the job of actually

loading and unloading planes. *Saxon*, 596 U.S. at 457 n.2; *see also Bissonnette*, 601 U.S. at 252 n.2.

2. Moreover, as Randstad's petition explained, far from mandating the Ninth Circuit's approach, this Court's reasoning in *Saxon* and *Bissonnette* counsels against it. *See* Pet.25-28. This Court has repeatedly emphasized that those invoking § 1 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. *Saxon*, 596 U.S. at 457-58; *Bissonnette*, 601 U.S. at 256. Likewise, the Court has repeatedly indicated that merely having a role in an interstate supply chain—or even being necessary for that supply chain to function—is insufficient. *See, e.g.*, *Saxon*, 596 U.S. at 460 (interpretation of § 1 that would sweep in "shift schedulers"—without whom Southwest's interstate supply chain presumably could not function—"defines the relevant class of workers too broadly"). But that is precisely the sort of reasoning Ortiz and the Ninth Circuit have adopted. *See* BIO 24 ("Without the involvement of … Mr. Ortiz, the goods would not be able to continue on their journey across state lines."); Pet.App.16a ("Ortiz ensured that goods would reach their final destination by processing and storing them while they awaited further interstate transport.").

This privileging of the goods transported, instead of the work the class of workers performs, not only runs contrary to this Court's guidance, but also contravenes § 1's text. After all, the statute refers to a "*class of workers engaged in* foreign or interstate commerce"—not to a class of workers that happens to work with goods that move in foreign or interstate

commerce. 9 U.S.C. § 1 (emphasis added). Those who carry goods across borders themselves meet that standard, as do those who load or unload them from the vehicles that do so. The same cannot be said, however, of internal warehouse workers or last-mile drivers, who are "further removed from the channels of interstate commerce or the actual crossing of borders." *See Saxon*, 596 U.S. at 457 n.2.

Ortiz's repeated observation that the goods in question here might cross state lines after his work with them finishes, *see* BIO 23-24, is no more persuasive on the merits than his similar argument with respect to the split. *See supra* at 5-6. As noted above, the Eleventh and Fifth Circuit's correct focus on the workers' work instead of the goods' interstate journey means that it matters not whether that journey comes before or after the workers' work (or both).

3. The late-nineteenth- and early-twentieth-century cases Ortiz cites further reflect his improper focus on the goods' journey rather than the workers' work. *See, e.g.*, *Rhodes v. Iowa*, 170 U.S. 412, 414 (1898) ("The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to *the box in question* whilst it was in transit…." (emphasis added)); *Covington Stock-Yards Co. v. Keith*, 139 U.S. 128, 136 (1891) (addressing only when the "transportation of live stock" began and ended). Those citations beg the Question Presented rather than answering it by taking as given that the goods' journey rather than the workers' work is what matters.

More broadly, Ortiz's older cited authorities concerning the scope of the Commerce Clause, *see Rhodes*, 170 U.S. at 415; *Puget Sound Stevedoring Co. v. Tax Comm'n of State of Wash.*, 302 U.S. 90, 91 (1937), are inapposite because this Court has already held that § 1's "narrow[]" exemption does *not* reach the limits of Congress's Commerce Clause authority. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15, 118 (2001). Similarly, other cases about the meaning of "commerce" or "transportation" in other contexts teach nothing about the meaning of § 1. *See, e.g.*, *Ex parte Easton*, 95 U.S. 68 (1877) (commenting on "commerce" in assessing the scope of maritime jurisdiction); *Covington Stock-Yards Co.*, 139 U.S. at 133 (commenting on "transportation" in addressing a railroad company's "legal obligation, arising out of the nature of its employment," to provide stock-yards "free from any [additional] charge"). Nor, finally, is there any reason to think that Congress meant to incorporate the particular definition of "transportation" it used in the Interstate Commerce Act of 1920, Pub. L. No. 66-152, § 4003(3), 41 Stat. 456, 475, into § 1 of the FAA—particularly given that § 1 does not use the word "transportation" at all. *See* BIO 26-27 (invoking that statutory definition).

At bottom, as then-Judge Barrett recognized in *Wallace v. Grubhub Holdings, Inc.*, a successful § 1 claim requires that the class of "workers must be connected not simply to the goods" that crossed borders at some point in their journey, "but to the act of moving those good across state or national borders." 970 F.3d 798, 802 (7th Cir. 2020). Because Ortiz's class of workers is not connected to any such act, § 1 is inapplicable here.

IV. ORTIZ'S ASSERTED VEHICLE CONCERNS LACK MERIT.

As Randstad's petition explained, this case presents an unusually clean vehicle for the Court to resolve the Question Presented, because the case comes to the Court on facts assumed by both the District Court and the Ninth Circuit. *See* Pet.28-29 (citing Pet.App.8a). Ortiz's only response is that he would contest the accuracy of these assumed facts on remand. *See* BIO 20 n.5. But that, of course, poses no barrier to review by this Court, which frequently resolves disputes over the proper legal test before remanding for the lower courts to determine facts and apply them to the clarified standard. *See, e.g.*, *Herrera v. Wyoming*, 587 U.S. 329, 352 (2019) (ruling against Wyoming on question presented, but noting that Wyoming could press alternative arguments or arguments under a newly clarified standard on remand); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 318 (2019) (remanding in part "because [the court of appeals] did not have an opportunity to consider fully the standards we have described in … our opinion").

CONCLUSION

The petition for a writ of certiorari should be granted.

August 28, 2024

Respectfully submitted,

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