No. 23-424

In the
Supreme Court of the United States

AMAZON.COM, INC., ET AL.,
Petitioners,

v.

JENNIFER MILLER, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS *AMICUS CURIAE* SUPPORTING PETITIONER

CALVIN HOUSE
Counsel of Record
GUTIERREZ, PRECIADO & HOUSE, LLP
3020 E. Colorado Boulevard
Pasadena, CA 91107
(626) 449-2300
calvin.house@gphlawyers.com

Counsel for Amicus Curiae

November 22, 2023

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

The Civil Justice Association of California ("CJAC") is a nonprofit organization whose members are businesses from a broad cross-section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members, including those that concern the scope and application of the Federal Arbitration Act ("FAA").

CJAC's members collectively employ many thousands of people in California and hundreds of thousands nationally to provide various products and services. Most of CJAC's members have elected, as have many employers throughout the country, to resolve disputes with their employees over employment matters through binding arbitration. CJAC supports the FAA's protective umbrella for voluntary, binding arbitration and believes that arbitration is preferable to litigation for maintenance of a viable economy, including jobs for local, independently contracted transportation workers.

---

[1] Counsel of record for the parties received timely notice of the intent to file this brief. No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from *amicus* made a monetary contribution to the preparation or submission of this brief.

The current state of the law on the question that the Petitioner has asked the Court to decide is uncertain, creating confusion in the lower federal and state courts and among litigants. CJAC is concerned that this uncertainty may undermine the "national policy favoring arbitration" that the Court articulated in *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). The Court should grant review to provide the clarity and certainty on this issue that is needed to assure uniformity of decision.

SUMMARY OF THE ARGUMENT

Since the Court decided the *Circuit City* case in 2001, the lower federal courts and the state courts have struggled to understand what the Court meant when it said that Section 1 of the Federal Arbitration Act should be interpreted "as exempting contracts of employment of transportation workers, but not other employment contracts." *Circuit City Stores v. Adams*, 532 U.S. 105, 109 (2001). Some courts have taken a narrow view of the exemption, holding that it only covers those classes of transportation workers who transport goods across state lines. Others, like the Ninth Circuit in this case, have taken an expansive view, holding that the exemption applies to local transportation workers who handle goods that others have transported across state lines. The Court should grant certiorari and resolve the conflict by ruling that the exemption only covers classes of workers a central part of whose jobs is the interstate movement of goods.

ARGUMENT

I. The lower courts are split over how to interpret the phrase "any other class of workers engaged in foreign or interstate commerce."

Circuit splits that leave important questions of statutory construction unresolved "are one of the primary reasons the Court grants certiorari." William Baude, *Precedent and Discretion*, 2019 Sup. Ct. Rev. 313, 323-324 (2020). See Sup. Ct. Rule 10(a). Rule 10 also recognizes that divisions among state courts and the courts of appeals over the meaning of federal statutes justify granting certiorari.[2] In the 20 plus years since the *Circuit City* decision, the lower courts have been unable to agree on the meaning of the phrase "any other class of workers engaged in foreign or interstate commerce" in Section 1 of the Federal Arbitration Act.

Among the federal courts of appeals, the Ninth Circuit rule that the Court of Appeals relied on for its decision in this case is that the exemption extends to workers who deliver goods moving in interstate commerce to their final destination, even if the workers' actions all take place in one state. Petition,

---

[2] "State courts rather than federal courts are most frequently called upon to apply the Federal Arbitration Act (FAA or Act), 9 U.S.C. §1 et seq., including the Act's national policy favoring arbitration. It is a matter of great importance, therefore, that state supreme courts adhere to a correct interpretation of the legislation." *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 17-18, 133 S. Ct. 500, 501 (2012).

pp. 2a-3a. It articulated the rule in *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (2020), and adhered to it in *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023). The First Circuit follows a similar rule. *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 13 (1st Cir. 2020) ("we now hold that the exemption encompasses the contracts of transportation workers who transport goods or people within the flow of interstate commerce, not simply those who physically cross state lines in the course of their work").

The Fifth Circuit has adopted a narrower construction. In *Lopez v. Cintas Corp.*, 47 F.4th 428, 432 (5th Cir. 2022), the employees were local delivery drivers who took items from a warehouse to local customers. Because they "enter[ed] the scene after the goods have already been delivered across state lines," they were not engaged in interstate commerce. The Seventh and Eleventh Circuits have adopted a similar construction. *See Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 801 (7th Cir. 2020) ("To determine whether a class of workers meets that definition, we consider whether the interstate movement of goods is a central part of the class members' job description"); *Hamrick v. Partsfleet, Ltd. Liab. Co.*, 1 F.4th 1337, 1349 (11th Cir. 2021) ("The transportation worker exemption applies if the employee is part of a class of workers: (1) employed in the transportation industry; and (2) that, in the main, actually engages in foreign or interstate commerce").

State courts are similarly divided. Two intermediate appellate courts in California have extended the exemption to local delivery drivers who

handle goods that were previously transported across state lines. *Betancourt v. Transportation Brokerage Specialists, Inc.*, 276 Cal. Rptr. 3d 785 (Ct. App. 2021) (local driver for "last-mile" delivery company whose primary client was online retailer Amazon.com Inc. was exempt); *Nieto v. Fresno Beverage Co., Inc.*, 245 Cal. Rptr. 3d 69 (Ct. App. 2019) (beverage delivery driver who only made intrastate deliveries was exempt because some beverages were manufactured out-of-state, then sent to an in-state warehouse, where the local driver picked them up).

An intermediate appellate court in the State of Washington ruled that Domino's employees who transported goods locally from a supply chain center to Domino's restaurants fell within the exemption, because local delivery "is the last step in a continuous channel of interstate transportation." *Oakley v. Domino's Pizza, LLC*, 516 P.3d 1237, 1243 (Wash.Ct.App. 2022).

In contrast, the Supreme Judicial Court of Massachusetts ruled that Grubhub drivers who picked up goods that had been part of interstate commerce from a restaurant, delicatessen, or convenience store were not covered by the exemption. *Archer v. Grubhub, Inc.*, 190 N.E.3d 1024, 1033 (Mass. 2022).

As these recent decisions show, the status of local delivery drivers under the FAA is an important, recurring issue, on which the lower courts are split. Because the question raised by the Petitioner in this case is one of importance that the Court has not yet decided, and one over which the lower courts are

divided, certiorari should be granted. *Braxton v. United States*, 500 U.S. 344, 347 (1991) ("A principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law").

II. The Court should grant certiorari to make clear that the Courts of Appeals and the state courts must narrowly construe the exemption to further the liberal federal policy favoring arbitration.

The FAA "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). To further that policy, "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Ibid.* The FAA "embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause." *Perry v. Thomas*, 482 U.S. 483, 490 (1987).

However, the exemption from the act for "any other class of workers engaged in foreign or interstate commerce" is to be given "a narrow construction." *Circuit City*, 532 U.S. at 118. As the Court has explained, "it would be incongruous to adopt . . . a conventional reading of the FAA's coverage in § 2 in order to implement proarbitration policies and an

unconventional reading of the reach of § 1 in order to undo the same coverage." *Id.* at 122.

Taking an expansive view of the transportation worker exemption would increase the number of cases in which state laws could be invoked to defeat arbitration. The Court has frequently had to intervene to prevent state anti-arbitration laws from defeating the federal policy favoring arbitration. In *Circuit City*, it rejected the argument of the attorneys general from 22 states that "States should be permitted, pursuant to their traditional role in regulating employment relationships, to prohibit employees like respondent from contracting away their right to pursue state-law discrimination claims in court." 532 U.S. at 122. In *Nitro-Lift Technologies*, it reversed a decision of the Oklahoma Supreme Court that rested on "judicial hostility towards arbitration." 568 U.S. at 21.

The adoption of an expansive construction of the exemption is of particular concern to CJAC, whose members conduct business in California, the arbitration laws and decisions of which have consumed a lot of this Court's time. In *Southland Corp.*, *supra*, 465 U.S. 1, 3 (1984), the Court ruled that the California Franchise Investment Law (which purported to invalidate certain arbitration agreements covered by the FAA) violated the Supremacy Clause. In *Perry*, *supra*, it ruled that the FAA preempted a section of the California Labor Code that actions for collection of wages could be maintained without regard to the existence of any private agreement to arbitrate. In *Preston v. Ferrer*, 552 U.S. 346 (2008), it ruled that a California statute

requiring some wage and hour disputes to be determined by a state administrative agency conflicted with the FAA. In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), it reversed a Ninth Circuit decision that relied on California law to find an arbitration provision unconscionable because it disallowed classwide proceedings. In *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 54 (2015), it ruled that California courts could not use a contractual choice of California law to overcome this Court's invalidation of a California rule that was hostile to arbitration.[3] Most recently, it ruled that the FAA preempts a California rule that precluded division of statutory representative actions into individual and non-individual claims through an agreement to arbitrate. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1911 (2022).

To prevent state law restrictions from eroding the FAA's liberal policy favoring arbitration, the Court should grant certiorari to provide a clear rule that the exemption only extends to classes of transportation workers whose jobs involve the transportation of goods across state lines. Such a rule follows logically from the Court's decision in *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783 (2022), where it explained how to resolve a dispute over the application of the

[3] Justice Breyer explained the absurdity of the California court's ruling as follows: "In principle, they might choose to have portions of their contract governed by the law of Tibet, the law of pre-revolutionary Russia, or (as is relevant here) the law of California including the *Discover Bank* rule and irrespective of that rule's invalidation in *Concepcion*." 577 U.S. at 54.

exemption. One must first define the relevant "class of workers" to which the plaintiff belongs, and then determine whether that class of workers "is engaged in foreign or interstate commerce." *Id.* at 1788. The plaintiff in that case fell within the exemption because she belonged to a class of workers who physically load and unload cargo on and off interstate-bound airplanes on a frequent basis. That class of workers was "directly involved in transporting goods across state or international borders." *Id.* at 1789. In a footnote, the Court recognized that further clarification would be needed to determine whether the exemption applied to those who were not directly involved in transporting goods across borders:

> We recognize that the answer will not always be so plain when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders. *Compare*, *e.g.*, *Rittmann v. Amazon.com, Inc.*, 971 F. 3d 904, 915 (9th Cir. 2020) (holding that a class of "last leg" delivery drivers falls within §1's exemption), with, *e.g.*, *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 803 (7th Cir. 2020) (holding that food delivery drivers do not). In any event, we need not address those questions to resolve this case.

Id. at 1789 n.2.

The decision by the Ninth Circuit that is the subject of the present petition squarely presents the issue that the Court did not need to address in *Saxon*:

> Whether the Federal Arbitration Act's exemption for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," 9 U.S.C. 1, extends to delivery drivers who make local deliveries of goods, including locally stocked food and items, because those goods were shipped from other states at some prior point in time.

Petition, p. i. The Court should grant the petition and adopt the narrow construction of the exemption articulated by the Fifth Circuit, reject the Ninth Circuit's broad construction, and make clear that it only applies to those who are part of a class of workers who are engaged in the transportation of goods across state lines.

CONCLUSION

The interpretation of the phrase "other class of workers engaged in foreign or interstate commerce" has implications for a growing number of businesses in the modern economy. The United States Courts of Appeals and the state courts cannot agree on how to interpret the phrase. This Court should exercise its certiorari jurisdiction to resolve the conflict over the meaning of the phrase, and make clear that only those classes of workers who are engaged in the transportation of goods across state lines fall within

the exemption. That will prevent the lower courts from undermining the FAA's liberal policy in favor of arbitration by excluding large numbers of arbitration agreements from application of the FAA.

Respectfully submitted,

CALVIN HOUSE
Counsel of Record
GUTIERREZ, PRECIADO & HOUSE, LLP
3020 E. Colorado Boulevard
Pasadena, CA 91107
(626) 449-2300
calvin.house@gphlawyers.com

Counsel for Amicus Curiae

November 22, 2023