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

RESPONDENTS' BRIEF IN OPPOSITION

BETH E. TERRELL
TOBY J. MARSHALL
JENNIFER RUST MURRAY
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103

HILLARY SCHWAB
Counsel of Record
BRANT CASAVANT
Fair Work, P.C.
192 South Street, Suite 450
Boston, MA 02111
(617) 607-3261
hillary@fairworklaw.com

Counsel for Respondents.

QUESTION PRESENTED

Whether the Ninth Circuit properly held that Amazon Flex drivers who complete the final leg of the delivery of packages ordered by customers and sent from out of state are "workers engaged in foreign or interstate commerce," 9 U.S.C. § 1, subject to the Federal Arbitration Act's section 1 exemption?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes and Other Authorities:

INTRODUCTION

This Court has provided clear guidance on the scope and application of the provision in Section 1 of the Federal Arbitration Act ("FAA"), which provides that the FAA does not apply to "contracts of employment of . . . any . . . class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Court has held that that provision exempts from the FAA the "contracts of employment of transportation workers," *i.e.*, those who have a "necessary role in the free flow of goods." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119, 121 (2001). Further, this Court has applied the provision to airline cargo handlers, who are "actively 'engaged in transportation' of [] goods across borders via the channels of foreign or interstate commerce," 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." *Southwest Airlines, Inc. v. Saxon*, 596 U.S. 450, 458-59 (2022).

All of the circuit courts that have considered this question have consistently applied clear precedent from this Court (*Circuit City* first, then *Saxon* as well, for cases decided after the issuance of that decision) in determining whether or not the section 1 exemption applies. Where workers are actively engaged in the transportation of goods while their interstate journey in progress (whether or not the workers themselves actually cross state lines), circuit courts have held that the workers are "engaged in foreign or interstate commerce," 9 U.S.C. § 1, and the section 1 exemption

applies. *See Miller v. Amazon.com, Inc.*, No. 21-36048, 2023 WL 5665771 (9th Cir. Sept. 1, 2023); *Saxon v. Southwest Airlines Co.*, 993 F.3d 492 (7th Cir. 2021); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020); *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020). Where the workers perform work delivering goods or people only locally, separate from any previous travel from out of state, in contrast, circuit courts have held that the section 1 exemption does not apply. *See Immediato v. Postmates, Inc.*, 54 F.4th 67 (1st Cir. 2022); *Lopez v. Cintas Corp.*, 47 F.4th 428 (5th Cir. 2022); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020).

The guidance from this Court has sufficed to allow the circuit courts to decide these cases. There is no "confusion" or "muddle," Defs.' Cert. Pet. at 1, as Amazon suggests. The standard is clear, and it has been clearly and consistently applied. Amazon's petition should be denied.

REASONS FOR DENYING THE PETITION

I. THIS COURT HAS PROVIDED CLEAR GUIDANCE ON THE APPLICATION OF THE FEDERAL ARBITRATION ACT'S SECTION 1 EXEMPTION.

On the question posed in this case—whether the Federal Arbitration Act's section 1 exemption applies to Amazon Flex delivery drivers—this Court has already issued clear and sufficient guidance. And the circuit courts that have applied the exemption have all done so consistent with and in reliance on that guidance.

This Court first interpreted the language in § 1 of the Federal Arbitration Act ("FAA") that the FAA does not apply "to contracts of employment of . . . any other class of workers engaged in foreign or interstate commerce," 9 U.S.C. § 1, in *Circuit City*. The Court held that the language did not cover "all employment contracts," but only "contracts of employment of transportation workers." 532 U.S. at 119. The Court explained further that "transportation workers" are those who have a "necessary role in the free flow of goods." *Id.* at 121.

Second, in *New Prime, Inc. v. Oliveira*, 586 U.S. __, 139 S. Ct. 532 (2019), this Court held that the language "contracts of employment" in 9 U.S.C. § 1 included contracts of employment of individuals classified as independent contractors. The Court was guided by the ""fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.'" *Id.* at 539. Recognizing that "[w]hen Congress enacted the Arbitration Act in 1925, the term 'contracts of employment' referred to agreements to perform work," the Court held that the term applies to such contracts even when the individual in question is classified as an independent contractor. *Id.* at 543-44.[1]

---

[1] Amazon claims that, in *Oliveira*, the Court expressed relief that it "did not need to resolve any dispute in that case over whether the individual at issue belonged to a 'class of workers engaged in foreign or interstate commerce.'" Defs.' Cert. Pet. at 7. That is not at all what the Court said—it merely noted that there was an area of agreement among the parties, stating: "[h]appily, everyone before us agrees that Mr. Oliveira qualifies

Finally, last year, in *Southwest Airlines, Inc. v. Saxon*, this Court expounded on the scope of the section 1 exemption, drawing on its previous ruling in *Circuit City* and explaining: "[A]ny such worker must at least play a direct and 'necessary role in the free flow of goods' across borders. . . Put another way, transportation workers must be actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." 596 U.S. at 450 (quoting *Circuit City*, 532 U.S. at 121). Applying that standard, this Court held that cargo handlers for Southwest Airlines were transportation workers. "[O]ne who loads cargo on a plane bound for interstate transit is intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Id.* at 458. This is so 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 (quoting *Erie R. Co. v. Shuart*, 250 U.S. 465, 468 (1919)). The Court reached this conclusion even though the cargo handlers themselves did not cross state or international borders.

Moreover, despite Amazon's suggestion to the contrary, in *Saxon*, this Court rejected employers' arguments that section 1 should be read more narrowly in light of the purpose of section 2 of the FAA. As this Court explained, "we are not 'free to pave over bumpy statutory texts in the name of more expeditiously ad-

---

as a 'worker[] engaged in . . . interstate commerce.'" 139 S. Ct. at 539.

vancing a policy goal.'" *Saxon*, 596 U.S. at 463 (quoting *Oliveira*, 139 S. Ct. at 543). Instead, where "§ 1's plain text suffices to show that [a particular class of workers is] exempt from the FAA's scope, . . . we have no warrant to elevate vague invocations of statutory purpose over the words Congress chose." *Id*. Contrary to Amazon's argument, the scope, language, and intent of section 2 of the FAA are irrelevant to the analysis under section 1.

These decisions by this Court make clear that: (1) the section 1 exemption is not limitless, *i.e.*, it does not apply to every employment contract; (2) it applies to workers who have a "necessary role in the free flow of goods," *Circuit City*, 532 U.S. at 121; (3) it applies to contracts for work, even when the workers in question are not classified as employees; and (4) it applies to work done while interstate transportation is "still in progress," *Saxon*, 596 U.S. at 458, even if the work itself (*e.g.*, loading or unloading cargo) does not require the crossing of interstate or international borders. As discussed in Section II, *infra*, this guidance from the Court has resulted in circuit courts making consistent decisions about which workers constitute "transportation workers" under section 1, properly relying on this Court's precedent in deciding whether or not workers are performing duties necessary to the free flow of goods, *i.e.*, while interstate transportation is in progress. There is no need for further guidance from the Court on this question.

II. THERE IS NO CIRCUIT SPLIT ON THE ISSUE OF WHEN WORKERS ARE ENGAGED IN FOREIGN OR INTERSTATE COMMERCE.

The circuit courts that have applied the FAA's section 1 exemption since *Circuit City (*and since *Saxon*) have hewed closely to this Court's jurisprudence in applying the exemption to different fact patterns. A clear distinction has emerged. Courts have concluded that workers who deliver goods to customers that have been ordered from out of state and have participated in the continuous journey of goods from shipment from out of state to delivery to their destination in state ***are*** transportation workers subject to the section 1 exemption. On the other hand, individuals who are involved in moving goods and/or people on a separate trip after they have completed an interstate journey ***are not*** transportation workers. The reasoning of these cases is uniform: for workers in the former category, "'[interstate transportation [is] still in progress,'" *Saxon*, 596 U.S. at 458 (quoting *Shuart*, 250 U.S. at 468); for workers in the latter category, the goods or people have come to rest in state, and the next trip is not the "last leg" of an interstate journey, but rather a new journey. *See Immediato*, 54 F.4th at 80 ("[C]ouriers [who] deliver goods that have already exited the flow of interstate commerce . . . are not exempt from the FAA by reason of section 1.").

Contrary to Amazon's argument, this is not an "intractabl[e] divi[sion] over what the FAA's language means for local delivery drivers." Defs.' Cert. Pet. at

12.[2] It is a consistent set of rulings, informed by this Court's precedent.

A. Circuit courts considering cases in which workers handle goods as part of their interstate journey have consistently held that the section 1 exemption applies.

In *Rittmann*, *Waithaka*, and this case, the Ninth and First Circuits held that Amazon Flex delivery drivers were transportation workers subject to the FAA's section 1 exemption because they participated in the continuous interstate journey of packages from ordering/shipment to delivery to the customers. In *Waithaka*, the First Circuit held that "Waithaka and other last-mile delivery workers who haul goods on the final legs of interstate journeys are transportation workers 'engaged in . . . interstate commerce,' regardless of whether the workers themselves physically cross state lines." 966 F.3d at 26. In *Rittmann*, the Ninth Circuit held that Amazon Flex drivers were engaged in interstate commerce because "the Amazon packages they carry are goods that remain in the

---

[2] Amazon attempts to use the phrase "local delivery drivers" to encompass workers across a broad spectrum of job responsibilities, from workers who deliver take-out orders from local restaurants (*Wallace*, 970 F.3d 798), to workers who engage in local sales and marketing in addition to deliveries, (*Lopez*, 47 F.4th 428), to Amazon Flex delivery drivers, who participate in the delivery of goods that customers have ordered and that Amazon has shipped from out of state (*Rittmann*, 971 F.3d 904; *Waithaka*, 966 F.3d 10). Amazon's language is inaccurate and attempts to blur the clear distinction that has been articulated by the circuit courts between workers who participate in part of a continuous interstate journey and workers who deliver local goods.

stream of interstate commerce until they are delivered." 971 F.3d at 915. These rulings are in keeping with *Saxon*—just as cargo handlers perform the final step of the journey of an airline passenger's luggage, Amazon Flex drivers perform the final step of a package's journey to the customer.

The Ninth Circuit's decision in *Carmona v. Domino's Pizza, LLC* has similarly identified the central question as whether or not the workers are delivering goods that are part of "'a single, unbroken stream of interstate commerce.'" 73 F.4th 1135, 1138 (9th Cir. 2023) (quoting *Carmona v. Domino's Pizza, LLC*, 21 F.4th 627, 629-30 (9th Cir. 2021). The court contrasted this with the delivery of products that "were transformed from their constituent ingredients into meals before the plaintiff drivers delivered them," which circuit courts have held does not satisfy the section 1 exemption. *Id.* (citing *Immediato*, 54 F.4th at 78).

So too has the Seventh Circuit determined that workers remain in state but who handle goods on their journey in interstate commerce come within the scope of section 1. In *Saxon v. Southwest Airlines Co.*, specifically, the Seventh Circuit held that ramp supervisors who load and unload cargo coming from or bound for out of state are transportation workers subject to the section 1 exemption, because their work is "'so closely related to [interstate transportation] as to be practically a part of it.'" 993 F.3d at 501 (quoting *Shanks v. Del., Lackawanna & W.R.R.*, 239 U.S. 556,

558 (1916)). This Court affirmed. 596 U.S. 450 (2022).[3] This decision was issued after *Wallace*, 970 F.3d 798 (discussed in Section II.B, *infra*), moreover, indicating that the Seventh Circuit was conscious of the distinction between handling goods as part of interstate commerce versus delivery of in-state goods involving some ingredients that may have come from out of state.

B. Where the workers in question handle local goods on a separate intrastate journey, circuit courts have held that the section 1 exemption does not apply.

The First, Fifth, and Seventh Circuits (*inter alia*) have all held that workers who handle local goods (which may be constituted from ingredients that have separately traveled from out of state) are not "engaged in foreign or interstate commerce" under section 1. In those cases, the goods being delivered/handled by the workers were not on a continuous journey from out of state. Accordingly, under this Court's rulings, the courts held that the plaintiffs were not transportation workers.

---

[3] The Fifth Circuit went the other way, holding in *Eastus v. ISS Facility Services, Inc.* that a ramp supervisor was not part of a class of workers engaged in foreign or interstate commerce because "[s]he was not engaged in an aircraft's actual movement in interstate commerce." 960 F.3d 207, 212 (5th Cir. 2020). However, this Court abrogated the Fifth Circuit's *Eastus* decision in *Saxon* (in which it affirmed the Seventh Circuit's decision on this issue). *See Saxon*, 450 U.S. at 455 ("The Seventh Circuit's decision conflicted with an earlier decision of the Fifth Circuit. *See Eastus v. ISS Facility Services, Inc.*, 960 F.3d 207 (2020). We granted certiorari to resolve the disagreement.").

Wallace involved drivers who delivered "takeout from local restaurants." 970 F.3d at 799. The Seventh Circuit held that these GrubHub delivery drivers did not fall within the section 1 transportation worker exemption because the drivers had not shown that they were "connected to . . . the act of moving [] goods across state or national borders." 970 F.3d at 802.

In *Immediato v. Postmates, Inc.*, the First Circuit ruled consistently with the Seventh Circuit's decision in *Wallace* that local food delivery drivers were not transportation workers under section 1. 54 F.4th 67. The court explained: "[t]he term 'engaged in foreign or interstate commerce' in section 1 can apply to workers who are engaged in the interstate movement of goods, even if they are responsible for only an intrastate leg of that movement," but "[t]heir work . . . must be a constituent part of that movement, as opposed to a part of an independent and contingent intrastate transaction." *Id.* at 77. Because in *Immediato* "[t]he interstate journey terminates when the goods arrive at the local restaurants and retailers to which they are shipped," the couriers' delivery of meals and goods from local businesses is part of "entirely new and separate transactions," and the section 1 exemption did not apply. *Id.* at 78.

Though altogether ignored by Amazon, the First Circuit explained clearly in *Immediato* the distinction between that case and *Waithaka*. Because the customers in *Waithaka* "bought goods directly from Amazon, which orchestrated the interstate movement of those goods and arranged, as part of the purchase, for their delivery directly to the customer," "[t]hat local delivery was therefore integral to the interstate movement

such that the goods remained within the flow of interstate commerce until arriving at the customer's doorstep." *Id*. In contrast, in *Immediato*, "the goods are purchased from local vendors — and at that point, the goods have already exited the flow of interstate commerce." *Id*. This is precisely the distinction that all of the circuit courts have made, and the First Circuit's decision in *Immediato* demonstrates that this Court's guidance to date has sufficed for the circuit courts to navigate this issue.[4]

In *Lopez v. Cintas Corporation*, all that can be gleaned from the scant factual record is that the plaintiff "picked up items from a Houston warehouse (items shipped from out of state) and delivered them to local customers" "with an emphasis on sales and customer service," including his training to take on "various sales-related tasks." 47 F.4th 428, 430-32 (5th Cir. 2022). While the Fifth Circuit refers to the workers at issue in *Lopez* as "local delivery drivers" "[f]or ease of

[4] The First Circuit's decision in *Fraga v. Premium Retail Services, Inc.*, 61 F.4th 228 (1st Cir. 2023), further illustrates the appropriate consideration of a section 1 question. There, the plaintiff worked as a merchandiser and had duties relating to bringing products and materials the last leg of their journey from out of state to a particular store and also had other duties. *Id*. at 236. However, the record was unclear about how frequently the plaintiff performed that type of work, and the First Circuit therefore held that "[w]hether Premium merchandisers belonged to a class of workers who sort, load, and transport goods . . . turns on how often they performed that work." *Id*. The court remanded the case to the District Court for further fact-finding on that question. *Id*. at 237.

reference," *id.* at 432, the record is clear that the duties at issue are different from those at issue here and in *Waithaka* and *Rittmann*—Lopez was not taking pre-ordered packages on the last leg of their journey to designated customers; he was doing deliveries, taking orders, making sales locally, etc. *Id.* at 430-32.

Moreover, the Fifth Circuit's limited analysis failed to recognize the important distinction between the workers in *Rittmann* and in *Wallace*. The Fifth Circuit describes them both as "last-mile drivers" and asserts that "[o]ur sister circuits that have addressed this issue have come out different ways." *Id.* at 432. Not so. As discussed in Section II.A, *supra*, *Rittmann* (like this case) concerned workers who took packages on the last leg of their interstate journey, while *Wallace* involved local deliveries of items that may have previously come from out of state. *Rittmann*, 971 F.3d at 915 ("AmFlex delivery providers are a class of workers that transport package through to the conclusion of their journeys in interstate and foreign commerce."); *Wallace*, 970 F.3d at 799 ("When a diner places an order through Grubhub's app, Grubhub transmits the order to the restaurant, which then prepares the diner's meal. Once the food is ready, the diner can . . . request that Grubhub dispatch a driver to deliver it to her.").[5]

---

[5] This Court has recognized the difference between the classes of workers at issue in *Rittmann* and *Wallace*, comparing *Rittmann*'s ruling as to "'last leg' delivery drivers" to *Wallace*'s ruling on "food delivery drivers." *Saxon*, 596 U.S. at 457 n.2. As this Court acknowledged in *Saxon*, and contrary to the Fifth Circuit's statement in *Lopez*, the workers at issue in these two cases differed in ways that are integral to the application of the § 1 exemption.

Despite glossing over the differences between *Rittmann* and *Wallace*, the Fifth Circuit does recognize that the workers at issue there are not like the last-mile delivery drivers for Amazon. *Lopez*'s so-called "local delivery drivers," as the Fifth Circuit points out, "have a more customer-facing role, which further underscores that this class does not fall within § 1's ambit." 47 F.4th at 433. In other words, the workers in *Lopez* were not just delivering goods already ordered by customers and originating from out of state (as Amazon Flex drivers do); they were engaging in local sales and customer service. While this may, as the Fifth Circuit held, take them out of "§ 1's ambit," *id.*, it does not create a circuit split. To the contrary, it further demonstrates that what the circuit courts have done is rule consistently as to where the line falls for transportation workers, under this Court's clear guidance in *Circuit City* and *Saxon*.

The Eleventh Circuit's decision in *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337 (11th Cir. 2021), is not relevant for a couple of reasons. First, *Hamrick* does not say what Amazon claims it says. Amazon claims that the Eleventh Circuit in *Hamrick* "ruled that the proper question, given the exemption's language, was whether the drivers were 'engaged in transporting goods across state lines.'" Defs.' Cert. Pet. at 14. However, the drivers in *Hamrick* had argued that drivers who perform intrastate trips "fall within the transportation worker exemption where 'they transport items which had been ***previously*** transported interstate.'" 1 F.4th at 1347 (emphasis added). That is not the issue in this case though. Here, the question is whether

drivers who deliver goods as part of a continuous interstate journey are engaged in interstate commerce, even though their leg of the journey occurs in-state.

In fact, the Eleventh Circuit did not even rule in *Hamrick* on whether or not the delivery drivers at issue were transportation workers under section 1. Instead, it remanded the case to the district court engage in "factfinding and weighing of conflicting evidence" in order "to determine whether the drivers are in a class of workers employed in the transportation industry and whether, in the main, the class actually engages in interstate commerce (even if some individual plaintiffs do not)." *Id.* at 1351-52. In any event, to the extent that *Hamrick* can be read to conclude that the workers themselves must cross interstate or international borders in order to be subject to the § exemption, then the decision has since been overruled by this Court's decision in *Saxon*. Actually crossing state lines is now unequivocally not required in order for workers to be subject to the section 1 exemption.

III. THE NINTH CIRCUIT'S DECISION IN THIS CASE IS IN KEEPING WITH THE LANGUAGE OF THE STATUTE AND THIS COURT'S PRECEDENT.

A. The Ninth Circuit's reasoned consideration of the company's business is consistent with this Court's decision in *Saxon*.

Amazon argues that the Ninth Circuit has erred in "plac[ing] heavy weight on the broader activities of

the business for which the workers perform their services," which Amazon claims this Court rejected in *Saxon*. Defs.' Cert. Pet. at 19-20. Amazon is incorrect on both counts: the Ninth Circuit has not overly emphasized the broader activities of the business; and this Court did not hold in *Saxon* that the company's broader activities are irrelevant.

First, contrary to Amazon's suggestion, *Rittmann* held that "'a class of workers must themselves be 'engaged *in the channels* of foreign or interstate commerce.'" 971 F.3d at 916-17 (emphasis in original) (quoting *Wallace*, 970 F.3d at 802). The Ninth Circuit concluded that, because "AmFlex workers complete the delivery of goods that Amazon ships across state lines and for which Amazon hires AmFlex workers to complete the delivery[,] AmFlex workers form a part of the channels of interstate commerce, and are thus engaged in interstate commerce as we understand that term." *Id.* at 917. That is *precisely* the analysis employed by this Court in *Saxon*. Specifically, the Court held that, as the workers loading and unloading cargo on airplanes bound to go out of state and/or out of the country, cargo loaders are "intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Saxon*, 596 U.S. at 458.

Moreover, it is not correct that the activities of the business are wholly irrelevant under *Saxon*. In *Saxon* (as in this case), the workers do not themselves move goods across state or foreign borders. They "physically load and unload cargo on and off airplanes." *Id.* at 456. However, because ***the airline*** moves that cargo in foreign and interstate commerce, the ramp agents' work is "part of the interstate transportation of goods." *Id.*

at 457. Under *Saxon*, one must look at where the goods eventually go (because of the company's business) in order to determine if the section 1 exemption applies. Indeed, the Court observed in *Saxon*: "Southwest Airlines moves a lot of cargo. In 2019, Southwest carried the baggage of over 162 million passengers to domestic and international destinations." 596 U.S. at 453-54. It went on to note that, "[t]o move that cargo, Southwest employs 'ramp agents,' who physically load and unload baggage, airmail, and freight." *Id*. at 454. Contrary to Amazon's assertion, the fact that the cargo handled by the ramp agents goes on to fly on airplanes out of state and out of the country (which it only does because of ***Southwest Airlines'*** business) ***is*** integral to the Court's conclusion in *Saxon*. *See, e.g.*, 596 U.S. at 457, 458 (cargo loading occurs onto and off of "planes traveling in interstate commerce," "plane bound for interstate transit").

Amazon's argument that "*Saxon* even rejects the Ninth Circuit's specific rationale for focusing on Amazon's business," Defs.' Cert. Pet. at 20, rests on a misinterpretation of the *Saxon* decision. The Court did not hold in *Saxon* that the business of the company is ***irrelevant***, only that it is not ***enough***. If it were irrelevant, there would be no need for the Court to note that Southwest Airlines "moves a lot of cargo," 596 U.S. at 453, in the context of determining if cargo handlers are engaged in interstate commerce.

Amazon argues that the Ninth Circuit should have reached the opposite conclusion under *Saxon* because "[l]ocal delivery drivers do not have such a 'direct and necessary role in the transportation of goods across borders.'" Defs.' Cert. Pet. at 21 (quoting *Lopez*,

47 F.4th at 433). This argument suffers from several fatal flaws. First, it attempts to use the term "local delivery drivers" to describe numerous different categories of workers. However, workers such as the Amazon Flex drivers who take a package on the last leg of its interstate journey differ from workers who deliver take-out orders from local restaurants. Second, it ignores the fact that, in *Saxon*, this Court held that workers who are local (*i.e.*, they do not themselves cross borders) are still engaged in interstate commerce because they handle goods as part of the goods' journey from or to other states, while that journey is "'still in progress.'" 596 U.S. at 458.

Amazon's argument is also flawed because it suggests that the First Circuit has somehow "conceded [Amazon's] point," Defs.' Cert. Pet. at 22, in *Immediato*, 54 F.4th 67. In fact, as discussed in more detail in Section II.B, *supra*, *Immediato* perfectly demonstrates the consistency of circuit courts' rulings on the transportation worker exemption under this Court's precedent. In *Immediato* (and *Wallace*), the § 1 exemption does not apply because "[t]he interstate journey terminates when the goods arrive at the local restaurants and retailers to which they are shipped," and the couriers' delivery of meals and goods from local businesses is therefore part of "entirely new and separate transactions." *Id.* at 78. In *Rittmann*, *Waithaka*, and this case, in contrast, "the goods remained within the flow of interstate commerce until arriving at the customer's doorstep," *id.* at 78, such that the workers were subject to the section 1 exemption. This distinction is not a "conce[ssion]" by the First Circuit—it is an example of the First Circuit consistently applying

this Court's clear precedent and arriving at different outcomes because of different fact patterns.

B. The relevant pre-FAA case law supports this Court's decision in *Saxon*, as consistently applied by the circuit courts.

Amazon selectively picks from what it characterizes as "the relevant history," citing two pre-FAA decisions from this Court which it claims support its point. Defs.' Cert. Pet. at 22. First, those cases are distinguishable. Both cases concerned questions about whether an entity operated in interstate commerce in connection with determining whether state taxation was appropriate or whether the entity was subject to federal laws. And both cases involve situations in which there is a continuous interstate journey and then a *separate* intrastate transport, often after an indefinite delay. *See People of State of New York ex rel. Pennsylvania R. Co. v. Knight*, 192 U.S. 21, 28 (1904) (for purpose of determining whether State of New York's imposition of franchise tax on cab service violated Commerce Clause, passenger interstate transit ended at train station, and separate cab rides from station to final destination were not in interstate commerce); *Interstate Com. Comm'n v. Detroit, G.H. & M. Ry. Co.*, 167 U.S. 633, 643 (1897) (for purpose of determining whether railroad operating wholly in one state is subject to federal laws relating to common carriers, journey on railway line was complete and separate, after which goods reach terminus and then may or may not go on to another destination).

Second, this Court has not referred to these cases in determining the scope of the FAA's § 1 exemption. To the contrary, in *Circuit City*, the Court held that the phrase "engaged in foreign or interstate commerce" in section 1 was to be interpreted in light of the specific language used in that statute and without reference to more general jurisprudence relating to interstate commerce and the interpretation of the Commerce Clause. 532 U.S. at 118-19. It appears to be a theory of Amazon's own making (advanced in *Rittmann* and in this case) that these pre-FAA Commerce Clause cases should bear on the interpretation of the FAA's § 1 exemption.

Saxon cited two pre-FAA cases, both of which demonstrated that interstate commerce ***does*** include the loading and unloading of goods coming from or traveling out of state. *See Erie Railway Co. v. Shuart*, 250 U.S. 465, 467 (1919) (quoted in *Saxon*, 596 U.S. at 458-59) ("If [the railroad's] employees had then been doing the work of unloading there could be no doubt that transportation was still in progress" and "interstate movement" had not ended."); *Baltimore & Ohio Southwestern Railway Co. v. Burtch*, 263 U.S. 540, 544 (1924) (quoted in *Saxon*, 596 U.S. at 457) (It is "too plain to require discussion that the loading and unloading of an interstate shipment by the employees of a carrier is so closely related to interstate transportation as to be practically a part of it."). Both of the pre-FAA cases cited by this Court in *Saxon* confirm that the circuit courts have properly recognized that workers who do not themselves cross state lines may still be engaged in interstate commerce.

***

There is no need for the Court to review this case. The circuit courts have consistently interpreted this Court's decisions in *Circuit City* and *Saxon*. There is no circuit split to resolve, and there is no confusion in the lower courts about how to apply the tests articulated by the Court in those cases. Amazon's bid to have this Court reconsider the issues that it considered just last year in *Saxon* should be rejected.[6]

[6] This Court is set to hear argument on another section 1 case early next year. *See Bissonnette v. LePage Bakeries Park St., LLC*, No. 23-51, 2023 WL 6319660 (cert. granted Sept. 29, 2023). Though the Court's decision in *Bissonnette* will not address the question presented here, it may have relevance to how the courts apply section 1 in future cases. There is no need for the Court to hear this case as well. This is especially so because, as discussed herein, the circuit courts have consistently applied this Court's precedent to decide the question posed in this case.

CONCLUSION

For the foregoing reasons, Defendants' petition for writ of certiorari should be denied.

Respectfully submitted,

BETH E. TERRELL
TOBY J. MARSHALL
JENNIFER RUST MURRAY
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street,
Suite 300
Seattle, WA 98103

HILLARY SCHWAB
Counsel of Record
BRANT CASAVANT
Fair Work, P.C.
192 South Street,
Suite 450
Boston, MA 02111
(617) 607-3261
hillary@fairworklaw.com

Counsel for Respondents.