No. 23-51

IN THE
Supreme Court of the United States

NEAL BISSONNETTE, ET AL.,
Petitioners,

v.

LEPAGE BAKERIES PARK ST., LLC, ET AL.,
Respondents.

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

BRIEF OF AMICUS CURIAE RESTAURANT LAW CENTER IN SUPPORT OF RESPONDENTS

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I. INTEREST OF AMICUS CURIAE

Amicus Curiae Restaurant Law Center ("Law Center") is the only independent public policy organization created specifically to represent the interests of the foodservice industry in the courts. The foodservice industry is a labor-intensive industry comprised of over one million restaurants and other foodservice outlets employing over 15 million people across the Nation – approximately 10 percent of the U.S. workforce. Restaurants and other foodservice providers are the Nation's second largest private-sector employers. The restaurant industry is also the most diverse industry in the Nation, with 47 percent of the industry's employees being minorities, compared to 36 percent across the rest of the economy. Further, 40 percent of restaurant businesses are owned primarily by minorities, compared to 29 percent of businesses across the rest of the U.S. economy. Supporting these businesses is *Amicus*'s primary purpose. The Law Center is concerned that overbroad construction of the residual clause in the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 leads to absurd results, causing the purely intrastate sale and delivery of foodstuffs to be improperly classified as interstate commercial transactions.[1]

II. SUMMARY OF ARGUMENT

It is beyond dispute that the § 1 exemption is

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[1] Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

an exercise of the plenary power granted to Congress pursuant to the Commerce Clause. Indeed, in interpreting the § 1 exemption, this Court in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), held that the phrase "engaged in commerce" found in § 1 was a term of art, purposefully chosen by Congress to indicate a limited assertion of jurisdiction under its commerce clause power over the FAA.

In the *Circuit City* case, this Court appropriately determined that the § 1 exemption applied to workers that are like "seamen" and "railroad employees", i.e., workers essential to operation of the traditional channels of interstate commerce, as historically regulated under the commerce clause. Subsequently, in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), this Court held that the § 1 exemption applied only to a "class of workers" that are "engaged in foreign or interstate commerce." Further, in *Saxon*, this Court again noted that to qualify for the § 1 exemption, a class of workers must have a necessary, adequate nexus to interstate commerce. Accordingly, any applicable definition of "transportation worker" inevitably must have that necessary, adequate nexus to interstate commerce.

Nevertheless, despite *Circuit City*'s admonition to interpret § 1 narrowly, Petitioners Neal Bissonnette, et al., ("Petitioner Employees") now ask this Court to construe *Circuit City* and *Saxon* broadly, capturing a "class of workers" regardless of whether those workers are traditional transportation workers who have any nexus to interstate commerce. More troublingly, those parties ask this Court to define a

"class of workers" as "engaged in foreign or interstate commerce" based *only* on the nature of the work performed, ignoring the requirement the work be connected by an adequate nexus to the traditional channels of interstate commerce. In essence, they claim that all goods are always part of a single, unbroken interstate journey to the consumer, an interpretation that leads to absurd results when applied to businesses like restaurants and bakeries. Instead, the interstate chain is broken when local businesses receive goods through the traditional channels of interstate commerce.

The absurdity of Petitioner Employees' construction of § 1 is made plain when considering that a baked good or restaurant meal is comprised of many ingredients, any number of which may have made a journey through the traditional channels of interstate commerce, after which they are combined into an entirely new product. Such products are then sold locally or driven to customers strictly intrastate. Imagine a delivery driver, taking a pizza two blocks to a customer. Petitioner Employees would have the Court view that person in the same light as a seaman or railroad employee whose work is essential to the operation of the traditional channels of interstate commerce. Such a suggestion strains credibility and is far afield from what was envisioned when the § 1 exemption to the FAA was created.

The Second Circuit properly held that independent business owners, whose transportation work included only local and intrastate movement of baked goods, were not exempt from the FAA. First,

the goods in question are not in interstate commerce. Second, the Petitioner Employees are not "transportation workers" because they are not primarily engaged in the movement of goods through the traditional channels of interstate commerce.

III. ARGUMENT

A. Expansive Construction Renders the Text of the Residual Clause Dead Letter.

This Court has unflaggingly held "that the § 1 exemption provision be afforded a narrow construction." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118. Accordingly, § 1 "exempts from the FAA only contracts of employment of transportation workers." *Id.* at 119. This Court in *Circuit City* did not specifically speak to what constitutes a "transportation worker" under § 1. Later, this Court returned to the text of the FAA, holding that a "transportation worker" is a member of a "class of workers" that "must at least play a direct and 'necessary role in the free flow of goods' across borders." *Southwest Airlines Co. v. Saxon*, 596 U.S. at 455, 458 (quoting *Circuit City*, 532 U.S. at 121). Notwithstanding those differences, the plain, ordinary meaning of the FAA text forecloses on a definition of "transportation workers" that would include classes of workers *not* engaged in interstate commerce. Otherwise, the words of § 1 are meaningless.

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1. The Residual Clause Exempts Only Those Transportation Workers Engaged in Interstate Commerce.

It is well settled Congress has unfettered authority to regulate the channels of interstate commerce under the Commerce Clause. U.S. Const. Art. I, § 8. Since *Gibbons*, regulation of the transportation of goods through interstate commerce channels is understood to be the province solely of Congress. *Gibbons v. Ogden*, 22 U.S. 1. Accordingly, the body of law cultivated from the seeds of *Gibbons* and its progeny has held that the Congressional "power to regulate interstate commerce is plenary." *Southern Railway Co. v. United States*, 222 U.S. 20, 27. That Congress intended to carve a class of workers out of the FAA under the power flowing from the commerce clause is manifest through the plain, ordinary meaning of the text of the residual clause – "that § 1 excludes from the Act's compass 'contracts of employment of workers engaged in interstate commerce.'" *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 538-539 (internal punctuation omitted); *see Southland Corp. v. Keating*, 465 U.S. 1, 12 ("the Arbitration Act was an exercise of the Commerce Clause Power"). Thus, the meaning of "transportation worker" under § 1 necessarily includes only those workers that are like "'seamen'" and 'railroad employees.'" *Circuit City*, 532 U.S. at 106. In short, any exempted worker must be "engaged in foreign or interstate commerce." *Saxon*, 596 U.S. at 458 (quoting 9 U.S.C. § 1). Specifically, "transportation workers must be actively 'engaged in transportation'

of [goods] across borders *via the channels* of foreign or interstate commerce." *Id.* (emphasis added).

In *Saxon*, this Court articulated the test to analyze whether § 1 applies to a particular contract. First, the court must define the "class of workers." Second, the court must determine whether that class of workers is "engaged in foreign or interstate commerce." *Saxon*, 596 U.S. at 455. Applying that test, this Court found, as in *Circuit City*, "that § 1 exempted only those classes of workers "actively engaged in transportation." *Id.* at 458 (internal quotations omitted). The "class of workers" analysis cannot be unanchored from the plenary power that first certified the § 1 exemption. "Put differently, a class of workers must themselves be 'engaged *in the channels* of foreign or interstate commerce.'" *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (quoting *McWilliams v. Logicon, Inc.*, 143 F.3d 573, 576 (10th Cir. 1998) (emphasis in original).

Axiomatically, Congressional exercise of its plenary interstate commerce power is expressed, and constrained, by statutory language. *Circuit City*, 532 U.S. at 115-116. This Court has long so held. *Fed. Trade Comm'n v. Bunte Bros.*, 312 U.S. 349, 352 (1941) (interpreting the phrase "in commerce"); *United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 277 (1975) (interpreting the phrase "engaged in commerce"); *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265,274-275 (1995) (interpreting the phrase "involving commerce").[2] *Saxon* confirms that

[2] Congress presumptively legislates with knowledge of the common law. Absent evidence to the contrary, Congress is

interpretation. "[T]ransportation workers must be actively 'engaged in transportation' of [goods] across borders *via the channels* of foreign or interstate commerce." *Saxon*, 596 U.S. at 458 (emphasis added). *Saxon*'s analysis illustrates that "transportation workers" include only those who primarily *move* goods *through traditional channels* of interstate commerce and does not encompass those who primarily *sell* goods that have some attenuated connection to those channels.

A different interpretation would impermissibly lead to absurd results, casting any buyer or seller of goods as "engaged in foreign or interstate commerce" provided those goods have moved, no matter how abstractly, through interstate commerce channels. Such readings of the § 1 exemption sweep purely intrastate agreements out from under the purview of the FAA. Local restaurants, as a consequence of offering foodstuffs for sale to the local community, would be hopelessly mired in an endless stream of interstate transactions to sell goods locally and intrastate. Strictly local restaurant franchisees would necessarily be so subsumed, as they obtain proprietary ingredients from warehouses across the country and indeed, the world, as a matter of course in preparing their standard offerings. Certainly, Congress did not intend to micromanage every basic

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presumed to use statutory language in accordance with the meaning derived from the common law and to use the same term consistently when it appears in different statutes. *See*, *e.g.*, Henry M. Hart, Jr. & Albert M. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 1182, 1201, n.505 (William N.Eskridge, Jr. & Phillip P. Frickey eds., 1994).

culinary transaction across the country when it drafted § 1. Congress did not intend to sweep into the limited exemption, delivery drivers traveling two blocks to drop off a pizza or hamburger. Instead, Congress aimed to do what it has always done under its plenary power – regulate the *traditional channels* of interstate commerce, such as seamen and railroad workers. Moreover, courts have repeatedly cautioned against overly broad readings of § 1 to avoid the mischief described above. *Wallace*, 970 F.3d at 802 (rejecting the argument that Grubhub drivers were engaged in interstate commerce because they delivered food items that had previously been shipped through foreign and interstate commerce channels); *Lopez v. Cintas Corp.*, 47 F.4th 428, 430 (5th Cir. 2022) (holding that driver who picked up items that had been shipped from out-of-state at a local warehouse and delivered them to local customers did not fall under § 1); *Immediato v. Postmates, Inc.*, 54 F.4th 67, 74 (1st Cir. 2022) (finding that interstate commerce does not "extend to the intrastate sale of locally manufactured goods"); *Singh v. Uber Techs., Inc.*, 67 F.4th 550, 558 (3rd Cir. 2023), *as amended* (May 4, 2023) (Food delivery drivers "deliver food only after it has left the stream of interstate commerce").

Immediato is particularly instructive. The First Circuit was not persuaded by the plaintiff's hypothesis that the interstate journey of goods ends only when it reaches its ultimate destination—the consumer. *Immediato*, 54 F.4th at 78. "When Congress enacted the FAA, the local retail of goods was not understood to be a part of interstate commerce." *Id.* at 76-77 (citing *Indus. Ass'n of S.F. v.*

United States, 268 U.S. 64, 79 (1925) and *Missouri ex rel. Barrett v. Kan. Nat. Gas Co.*, 265 U.S. 298, 308 (1924)). For § 1 to apply to a particular class of workers then, "[t]heir work must be a constituent part of [interstate commerce] movement, as opposed to a part of an independent and contingent intrastate transaction." *Id.* at 77. The class of workers must be "necessary to the interstate transport of goods in the same way as seamen and railway workers." *Id.* at 78. The nexus between the class of workers and the exemption must be movement of goods through the *traditional channels* of interstate commerce. The First Circuit's wisdom in so interpreting § 1 is illuminated by the application of its analysis to restaurants and other local businesses. As that court explained, "[t]he interstate journey ends when the goods arrive at the local restaurants and retailers to which they are shipped. Customers then purchase those meals and goods from local businesses. Thus, when the couriers set out to deliver customer orders, they do so as part of entirely new and separate transactions." *Id.* Indeed, any other interpretation of the clause renders all transactions part of interstate commerce, provided any monad of that transaction has some tangential relationship to the traditional channels. The absurdity of that interpretation is highlighted in the restaurant context. If a restaurant cooks a meal or a bakery bakes a pie for purely intrastate transactions, "[i]t makes little sense, then, to suggest that when those goods are again transported contingent to an intrastate purchase—the raw ingredients now comingled with others and prepared into a meal; the packaged good proceeding singly, bereft of its interstate brethren—they somehow resurface into the

flow of interstate commerce." *Id.* Such interpretation would stretch the § 1 exemption so broadly it would swallow the rule and so distort the definition of "transportation workers" as to completely detach it from the interstate commerce context. *See In Re Grice*, 974 F.3d 950, 958 (9th Cir. 2020) (rejecting the contention that a rideshare driver was "engaged in foreign or interstate commerce" when transporting riders to and from the airport). That interpretation cannot be countenanced. *See*, *e.g.*, *U.S. v. Kirby*, 74 U.S. 482, 486-487 (holding that statutory terms cannot be interpreted to lead to an absurd consequence).

Courts who have faithfully applied *Circuit City* and *Saxon* are largely in accord on this point. "Today almost every object we buy has some component that comes from out-of-state." *Grice*, 947 F.3d at 958. Indeed, more so today than ever before, rejecting the narrow construction of § 1 demanded by this Court in *Circuit City* would "sweep in numerous categories of workers whose occupations have nothing to do with interstate transport." *Wallace*, 970 F.3d at 802. Local delivery drivers "enter the scene after the goods have already been delivered across state lines. *Lopez*, 47 F.4th 428, 432. Particularly in the foodservice context, "they do so as part of separate intrastate transactions that are not themselves within interstate commerce." *Immediato*, 54 F.4th 67, 78. "Incidental border crossings are insufficient if a class of workers is not typically involved with the channels of interstate commerce." *Singh*, 67 F.4th 550, 559. Therefore, this Court should reject any definition of "transportation

worker" that unmoors its tether from the traditional channels of interstate commerce.

2. Transportation Workers Not Engaged in Interstate Commerce Are Not Exempted.

Statutory interpretation is a notoriously difficult undertaking. *See*, *e.g.*, *Yates v. United States*, 574 U.S. 528. The most basic rule in defining a statutory term is to "look first to the word's ordinary meaning." *Schindler Elevator Corp, v. U.S. ex rel. Kirk*, 563 U.S. 401, 407 (2011) (quoting *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 175 (2009) and *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995)). Accordingly, when applying the § 1 exemption to a "class of workers", the temptation exists to apply the exemption to all "transportation workers," even if those workers are not "actively 'engaged in transportation' of [goods] across borders via the channels of foreign or interstate commerce." *Saxon*, 596 U.S. at 458. However, this Court in *Saxon* and in *Circuit City* directed courts to connect the actual work performed to "'activities within the flow of interstate commerce.'" *Id.* at 462 (quoting *American Building*, 422 U.S. at 276). Thus, it is not enough that a "class of workers" are "transportation workers" generally, because this Court has defined "transportation workers" specifically for the purpose of applying the § 1 exemption.

For example, in *Lopez*, the Fifth Circuit found that plaintiff was a "transportation worker" because he was in a "class of workers" that court defined as

"local delivery drivers." *Lopez*, 47 F.4th at 431-432. There, the plaintiff picked up items at a local warehouse and delivered the items to local customers. The court reasoned that because the drivers "enter the scene after the goods have already been delivered across state lines" that they were not "so 'engaged' in 'interstate commerce' as § 1 contemplates." *Id.* at 432. In *Wallace*, the Seventh Circuit held that plaintiffs, whose primary duty was the delivery of meals to consumers, were not "actively engaged in the movement of goods across interstate lines", even though those workers "carry goods that have moved across state and even national lines." *Wallace*, 970 F.3d at 802. In *Grice*, the Ninth Circuit held that a rideshare driver, a "transportation worker" who frequently taxied passengers, traveling interstate and internationally, to and from the airport, was not "engaged in foreign or interstate commerce." *Grice*, 974 F.3d at 958. Presciently, the court noted that "the residual exemption is about what the worker does, *not just where the goods or people have been*." *Id.* (internal punctuation omitted) (emphasis added).

Those cases bring the appropriate scrutiny of the § 1 exemption into clearer focus. The exemption does not apply simply because a worker belongs, generally, to a class of "transportation workers." The exemption does not apply where goods are transported purely intrastate with an attenuated connection to the traditional channels of interstate commerce. The exemption does not apply simply because goods were once moved through traditional channels of interstate commerce, but are then moved in a separate, purely intrastate capacity. Nor does the exemption apply

simply because goods were once in the stream of interstate commerce but are no longer. Instead, in fidelity to *Circuit City* and *Saxon*, the exemption is to be construed *narrowly*, and only applied to "a class of workers" whose work has an essential and distinct nexus to the traditional channels of interstate commerce such that the workers are "engaged in foreign or interstate commerce." Otherwise, the exception swallows the rule, and the text of the clause made null.

B. A Class Of Workers' Industry Is Relevant To Whether That Class Falls Under § 1.

As just explained, § 1's exemption must be narrowly construed to include only classes of workers "engaged in foreign or interstate commerce." But even if the residual clause could be construed more broadly, a class of workers' industry is at the very least relevant to whether that class is "engaged in foreign or interstate commerce" within the meaning of § 1. Because defining a "class of workers" is a fact-intensive inquiry, many Courts of Appeals treat a worker's industry as vital to the § 1 analysis. Indeed, some courts find that inquiry essentially dispositive of the § 1 analysis because the particular facts inform both elements of the *Saxon* test.

1. Courts of Appeals Have Recognized that Industry Is Key to the § 1 Analysis.

In evaluating whether a "class of workers" is

"engaged in foreign or interstate commerce" for purposes of § 1, Courts of Appeals have considered the industry within which the class of workers is engaged. Even if engagement in the transportation industry is strictly required to qualify for the § 1 exemption, the text, history, and purpose of § 1 certainly confirm that such engagement is at minimum, relevant to the inquiry. Thus, even if this Court determines that the residual clause exemption extends to classes of workers outside the transportation industry, it should nonetheless recognize, based on the fact-specific nature of the analysis, that engagement in the transportation industry is an important consideration in determining whether the exemption applies.

As this Court has recognized, § 1 exempts contracts of employment for classes of workers who, at a minimum, "play a direct and 'necessary role in the free flow of goods' across borders." *Saxon*, *supra*, 596 U.S. at 455, 458 (quoting *Circuit City*, *supra*, 532 U.S. at 121). In applying that standard, most Courts of Appeals hold that engagement in the transportation industry is strictly necessary for § 1 to apply. *See, e.g.*, *Hill v. Rent-A-Center, Inc.*, 398 F.3d 1286, 1288 (11th Cir. 2005) ("Other circuits have held that the § 1 exclusion only applies to those workers in the transportation industry"); *Singh*, *supra*, 67 F.4th at 557 (identifying "non-exclusive" factors, including industry, as "useful guides" in the inquiry); *Lenz v. Yellow Transp., Inc.*, 431 F.3d 348, 352 (8th Cir. 2005) (finding that "whether the employee works in the transportation industry" is "first" among factors to consider). Insomuch as other circuits do not utilize a list of specific factors, they nevertheless account for

industry as a part of a generalized, fact-specific inquiry into "whether the interstate movement of goods is a central part of the class members' job description." *Wallace*, *supra*, 970 F.3d at 801 (Barret, J.); *Capriole v. Uber Techs., Inc.*, 7 F.4th 854, 865 (9th Cir. 2021) (finding that "any interstate commerce exemption inquiry must focus on the district court's factual findings regarding the extent of interstate work"); *Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 17 (D.D.C. 2021) (Jackson, J.) (holding that "the 'critical factor' underlying the applicability of the section one exemption is the nature of the business for which a class of workers performs their activities rather than whether the workers actually cross state lines") (internal punctuation omitted).

Those Courts of Appeals have all come to the same conclusion when analyzing the § 1 exemption: industry, though not dispositive, is a "critical factor" in determining whether a class of workers falls within the residual clause. *Grice*, *supra*, 974 F.3d at 956. Indeed, it must be so because both parts of the *Saxon* test require inherently fact-intensive inquiries. Courts are thus forced to the examine the nature of the employer's business to answer complex questions about § 1's applicability to its workers, whether they transport goods or people exclusively intrastate or actually travel across state lines. Of course, because the tasks an employer's workers perform is always inextricably intertwined with the employer's business, the court must consider those factors when applying the *Saxon* test. For example, in deciding that a class of intrastate couriers was not covered by the residual clause, the First Circuit focused on whether

that class is "responsible for a constituent part of the interstate delivery service that [the employer] agreed to provide its customers." *Immediato*, *supra*, 54 F.4th at 76. Similarly, in deciding whether a class of intrastate workers was covered by the residual clause under *Saxon*, the Fifth Circuit held that purely intrastate delivery drivers do not qualify as "last-mile driver[s]" and "do not have such a 'direct and necessary role' in the transportation of goods across borders" as to fall within the § 1 exemption. *Lopez*, *supra*, 47 F.4th at 433 (noting that the drivers' "customer-facing role" in delivering uniforms to businesses further indicated they did not qualify for the exemption). In finding that Grubhub drivers did not fall under the exemption, the First Circuit stated that "the inquiry is always focused on the worker's active engagement in the enterprise of moving goods across interstate lines." *Wallace*, 970 F.3d at 802.

Indeed, all of those cases held that those drivers were not engaged in interstate commerce because they were not part of a single, unbroken interstate commercial chain. Instead, those workers were part of separate and distinct, purely intrastate transactions. The employees are not covered by § 1 because their employers are "primarily in the business of facilitating local, intrastate trips." *Cunningham v. Lyft, Inc.*, 17 F.4th 244, 253 (1st Cir. 2021); *Singh*, 67 F.4th at 554, 560; *Capriole*, 7 F.4th at 863-864; *Osvatics*, 535 F. Supp. 3d at 18.

Compare those rulings to cases in which the Courts of Appeals found that the § 1 exemption does apply. *See, e.g.*, *Waithaka v. Amazon.com, Inc.*, 966

F.3d 10, 22–23, 26 (1st Cir. 2020) (finding the exemption applies to "last-mile delivery workers who haul goods on the final legs of interstate journeys"); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 915–919 (9th Cir. 2020) (same)). Amazon, a global retailer in the business of delivering goods to consumers, sets those goods on a single, unbroken interstate commercial journey until the goods reach said consumers. The drivers in the cases discussed above are not like Amazon's "last-mile" drivers because unlike Amazon, their employers are not in the business of providing interstate transportation of goods to customers. *See*, *e.g.*, *Rittmann*, 971 F.3d at 916 (distinguishing local food delivery drivers from last-mile delivery drivers).

Moreover, Courts' reliance on industry in applying § 1's residual clause accords with the text, history, and purpose of the exemption. The text of § 1 concentrates on workers in the transportation industry. The two classes of worker enumerated in § 1 are "seamen" and "railroad employees"—workers involved in the transportation industry "Plainly," if "seamen" and "railroad employees" are "defined by the nature of the business for which they work," "the activities of a company [is] relevant in determining the applicability of the FAA exemption to other classes of workers." *Waithaka*, 966 F.3d at 23.

The history and purpose of the § 1 exemption confirm that reading. As explained by this Court in *New Prime* and in *Circuit City*, in the years before the FAA's adoption, Congress enacted statutes promising certain working conditions for seamen and railroad

employees and created alternative dispute resolution schemes to address disputes that involved maritime shipping and railroad workers. *See New Prime*, *supra*, 139 S. Ct at 537 and *Circuit City*, 532 U.S. at 112, respectively. Not long thereafter, Congress saw fit to extend similar protections to the employees of air carriers. *See* Railway Labor Act of 1936, 49 Stat. 1189. In enacting § 1, Congress sought to ensure those statutory schemes, complete with industry-specific dispute resolution frameworks and other considerations remained intact, to prevent private arbitration agreements from annulling imperative statutory safeguards. *Circuit City*, 532 U.S. at 121.

However, such concerns were not present outside the national infrastructure context, and thus the exemption was not extended to workers who are not engaged in the traditional channels of interstate commerce. Because such workers are not covered by the alternative dispute resolution schemes Congress specifically adopted and strikes by those workers affects only their employer and its customers, it was unnecessary to include such workers in the exemption. *See e.g., Lenz*, 431 F.3d at 352 (explicitly evaluating whether "the employee is within a class of employees for which special arbitration already existed when Congress enacted the FAA" and "whether a strike by the employee would disrupt interstate commerce"). Furthermore, it was unnecessary to exempt other classes of workers under the Act because Congress expressly intended to "compel judicial enforcement of a wide range of written arbitration agreements." *Circuit City*, 532 U.S. at 111.

Accordingly, § 1's text, history, and purpose shows that the residual clause extends only to transportation industry workers in the traditional channels of interstate commerce. Moreover, any expansive construction of the clause, in line with the *Saxon* test, necessarily requires fact-intensive analysis of the employer's industry to determine whether its employees are in a "class of workers" that are "engaged in foreign or interstate commerce." *Saxon*, 596 U.S. at 458.

2. A Broad Formulation of the § 1 Standard Would Harm Restaurants and Related Industries.

As explained herein, the § 1 exemption applies to a class of workers engaged in foreign or interstate commerce, not all "transportation workers." Furthermore, even an impermissibly broad reading of the § 1 exemption requires fact-specific consideration of whether an employer is in the "transportation industry" to determine if the § 1 exemption applies under the *Saxon* test. Such considerations are of utmost import when evaluating the characteristics of a class of workers claiming the exemption.

Applying those considerations to the matter before this Court, Petitioner Employees fail to qualify for the § 1 exemption under any formulation of that standard. The drivers here are purely intrastate and local, bearing no resemblance to the "last-mile" drivers employed by Amazon in *Waithaka* and *Rittman*. *Accord Fraga v. Premium Retail Services,*

Inc., 61 F.4th 228, 237 (1st Cir. 2023) (holding that § 1 may exempt a class of workers who "frequently" engage in the interstate movement of goods, even if not their "primary or central duty"). Petitioner Employees never engage in the interstate movement of goods. Rather, Petitioner Employees are, at best, similar to the drivers in *Lopez*; they pick up, from a warehouse, goods that have formerly traveled interstate. "Once the goods arrived at the [in-state] warehouse, and were unloaded, anyone interacting with those goods was no longer engaged in interstate commerce." *Lopez*, 47 F.4th at 433. Petitioner Employees contracted for distribution rights of the sale of fresh, baked goods strictly within Connecticut state lines. They take title to the fresh, baked goods in Connecticut, in accordance with those distribution agreements.[3] Petitioner Employees then sell those fresh, baked goods exclusively within Connecticut state lines. Petitioner Employees, in fact, never cross state lines in connection with the operation of their businesses. "In other words, the interstate journeys of the goods that the couriers carry have already been completed by the time the couriers enter the picture, and, thus, the couriers' trips are distinct intrastate journeys." *Immediato*, 54 F.4th at 79. Accordingly, Petitioner Employees lack the required nexus to the traditional channels of interstate commerce that would justify application of the § 1 exemption.

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[3] It is at least worth noting that the distribution agreements are not "contracts of employment." *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 596 (4th Cir. 2023) (explaining that agreements "for certain business services to be provided by one business to another" are not "contracts of employment" within the meaning of § 1).

Similarly, in *Wallace*, the court reasoned that where, as here, couriers deliver goods that once were, but are no longer in the stream of commerce, the § 1 exemption does not apply. *Wallace*, 970 F.3d at 802. This Court should so hold.

Moreover, with respect to industry, it is undisputed that Petitioner Employees operate independent businesses that sell baked goods. The broader Restaurant industry is similar to bakeries, selling meals to customers, and in some cases delivering pizzas and other meals to customers mere blocks away from the restaurant's location. The *Immediato* court found that local retail of items like freshly prepared meals or, in this case, fresh baked goods, are not even contemplated by the § 1 exemption. *Immediato*, 54 F.4th at 76-77. Setting that issue aside, Petitioner Employees are not like the classes of workers that any court has held qualifies for the § 1 exemption. Starting with this Court's decision in *Saxon*, for example, the class of workers worked for an airline and were responsible for "physically loading cargo directly on and off an airplane headed out of State." *Saxon*, 596 U.S. at 462. In *New Prime*, this Court considered a worker who drove for an "interstate trucking company" that transported goods across state lines. 139 S. Ct. at 536. The plaintiffs in *Waithaka* and *Rittman* were the final leg of an unbroken interstate journey that "did not conclude until the packages reach their intended destinations." *Rittman*, 971 F.3d at 916. Petitioner Employees, by contrast, are unlike those workers because Petitioner Employees operate a "fundamentally local" business. *Singh*, 67 F.4th at 553. Indeed, as demonstrated by

the decisions of multiple Courts of Appeals discussed at length herein, the fresh, baked goods transported by Petitioner Employees are absent from the interstate commercial chain prior to Petitioner Employees taking title to those goods. "It is by happenstance, and not a result of any contribution of theirs to the interstate journey, that the goods they carry have crossed a state border at some point in time." *Immediato*, 54 F.4th at 79.

Resultantly, Petitioner Employees are members of a class of workers that simply do not fall within the § 1 exemption. Like rideshare drivers and couriers, Petitioner Employees' work, and the work of employees in the restaurant industry is local and intrastate. Indeed, this case is easier than *Grice*, *Immediato*, and *Wallace*, because unlike rideshare drivers and couriers, who may at least periodically cross state lines in the course of their work, Petitioner Employees never do. Moreover, like rideshare drivers and couriers, Petitioner Employees' work is not linked to the traditional channels of interstate commerce. Critically, rideshare companies, local delivery drivers, couriers, and food-delivery services are in the transportation industry because they sell either transportation of goods or transportation of persons. Conversely, Petitioner Employees primarily sell baked goods. Their connection, if any, to the transportation industry is highly attenuated.

Thus, a class of workers' industry is, at bottom, an important consideration in demarcating the scope of the § 1 exemption. Insomuch as industry is not a dispositive factor in the analysis, broadly construing

the § 1 exemption to cover Petitioner Employees would nonetheless result in blurring the meaning of "transportation worker." Despite this Court's plain dictate in *Circuit City* to construe the § 1 exemption narrowly, and the guidance set forth by this Court in *Saxon*, the fact-intensive nature of the *Saxon* inquiry portends courts be led astray. If purely local and intrastate movement of goods that have previously left the interstate stream can trigger the § 1 exemption, it will not be long before rideshare companies, local delivery drivers, couriers, and food-delivery services arrive at the courthouse steps, all seeking § 1 exemptions. Thereafter, local grocers, restaurants, franchisee or not, and local mom-and-pop business will be in the crosshairs of attorneys looking to circumvent otherwise valid arbitration agreements. Accordingly, this decision has significant implications, not just for the bakeries here, but also for the restaurant industry and other related industries.

Broad construction of the § 1 exemption violates the letter of the FAA, the intent of congress, and the longstanding jurisprudence of this Court. Thus, this Court should reject such constructions of the § 1 exemption and affirm the judgment of the U.S. Court of Appeals for the Second Circuit.

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IV. CONCLUSION

For the foregoing reasons, the Law Center urges this Court to affirm the judgment of the U.S. Court of Appeals for the Second Circuit.

Respectfully submitted,

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