No. 24-

IN THE

Supreme Court of the United States

AIRCRAFT SERVICE INTERNATIONAL, INC.,
AND MENZIES AVIATION (USA), INC.,

Petitioners,

v.

DANNY LOPEZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Federal Arbitration Act ("FAA") does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

In *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), this Court held that airline ramp supervisors who frequently load and unload cargo are exempt "transportation workers" because they "directly" transported interstate goods by "physically" moving cargo. Subsequent courts have applied *Saxon* by following this clear, practical language. *E.g.*, *Bissonnette v. LePage Bakeries Parks St., LLC*, 601 U.S. 246 (2024) (*Saxon* focuses on the work performed, not the employer's industry); *Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228 (1st Cir. 2023); *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152 (9th Cir. 2024) (workers who moved goods only small distances are exempt because they physically move the goods), *cert. denied* (U.S. Oct. 7, 2024) (23-1296). This case departs from *Saxon* and violates *Bissonnette*'s instruction to avoid "mini trials" caused by failing to give 9 U.S.C. § 1 the required narrow construction. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001). The Ninth Circuit found that workers who do not have direct involvement with nor physically move goods are transportation workers if they play some "vital component" in the process of transportation.

The question presented is: Whether workers who fuel airplanes, but who never directly or physically move interstate goods, are engaged in the interstate transportation of goods and exempt from the Federal Arbitration Act.

PARTIES TO THE PROCEEDING

All parties to the proceeding are set forth in the caption.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that (1) Aircraft Service International, Inc. and Menzies Aviation (USA), Inc. are both wholly owned by Menzies Aviation, Inc., which is a wholly owned subsidiary of John Menzies Limited, a foreign corporation. John Menzies Limited is completely privately owned and is not traded publicly anywhere in the world. No publicly held company owns any portion of the stock of any parent or subsidiary entity of Petitioners.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are related to this case:

- *Lopez v. Aircraft Service Int'l, Inc., et al.*, 21-CV-07108-DMG-Ex (C.D. Cal.) (order issued December 9, 2022).

- *Lopez v. Aircraft Service Int'l, Inc.; Menzies Aviation (USA), Inc.*, No. 23-55015 (9th Cir.) (judgment entered July 19, 2024, petition for rehearing en banc denied August 29, 2024).

There are no additional proceedings in any court that are directly related to this case.

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JURISDICTION

The Ninth Circuit denied rehearing en banc on August 29, 2024 after issuing an opinion on July 19, 2024 affirming the District Court's December 9, 2022 order denying the Petitioners' motion to compel arbitration. Pursuant to this Court's Rule 13, this petition is due 90 days after the date of the lower court's denial of rehearing en banc. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1 of the Federal Arbitration Act, 9 U.S.C. § 1, provides, in relevant part:

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein

> defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

INTRODUCTION

The Federal Arbitration Act, which requires courts to enforce arbitration agreements absent statutory exceptions otherwise, was enacted nearly 100 years ago to

codify a broad federal policy of eliminating the historical (and continuing) disfavoring of arbitration provisions as compared to other contracts. 9 U.S.C. § 2; *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) ("[C]ourts must place arbitration agreements on an equal footing with other contracts . . . and enforce them according to their terms"). The FAA applies to almost all arbitration agreements between employers and employees, except 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 (hereinafter, the "Transportation Exemption"[1]). The drafters of the FAA included the Transportation Exemption so as not to unsettle "established or developing statutory dispute resolution schemes covering" those workers. *Circuit City*, 532 U.S. at 121.

Because the FAA "seeks broadly to overcome hostility to arbitration agreements," this Court held in *Circuit City* that the Transportation Exemption should be construed narrowly. *Id.* at 118 (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 272–73 (1995)). In that case, this Court rejected the argument that the exemption should apply to all employment contracts and instead held that the FAA applies only to "contracts of employment of transportation workers." *Id.* at 109, 114. The Court relied on *ejusdem generis*, a canon of statutory construction by which a catchall phrase in a statute (here, the residual clause) is interpreted to "embrace only objects similar" to

1. The portion of the Transportation Exemption at issue in *Circuit City* and this matter is commonly referred to as "the residual clause." *Circuit City*, 532 U.S. at 114.

those enumerated. *Id.* at 114. The Court explained that a broader interpretation of the Transportation Exemption would "breed[ ] litigation from a statute that seeks to avoid it." *Id.* at 123 (quoting *Allied-Bruce*, 513 U.S. at 275).

Roughly twenty years after *Circuit City*, this Court revisited the Transportation Exemption in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022). In *Saxon*, this Court established a two-part test for analyzing whether the Transportation Exemption applies. First, a court must determine the "class of workers" at issue, and then once it has done so, it must determine whether that class of workers is "engaged in foreign or interstate commerce." *Id.* at 455. In terms of analyzing the second step of that test, *Saxon* instructs courts to consider whether the workers have "direct" and "physical" involvement with the movement of interstate goods that is sufficiently "active" and "frequent" to trigger the narrow exemption. *Id.* at 455–58.

Critically, *Saxon* directs courts engaging in this analysis to focus on the actual work the class of workers performs—not on the nature of the employer's operations. The class of workers at issue in *Saxon* were airline ramp supervisors. This Court applied the Transportation Exemption to such workers by explicitly and repeatedly relying on the fact that they frequently and physically loaded and unloaded cargo on and off airplanes and thus had the requisite level of "direct" involvement in interstate transportation. *Id.* at 463. Highlighting the potentially controlling effect of the need for this "direct" involvement in a footnote, the Court specifically raised the question of whether "supervision of cargo loading alone would suffice," at least suggesting that this small step

away from having frequent and direct physical contact with the goods was enough to draw the boundary around the narrow Transportation Exemption. *Id.* at 456 n.1 (quoting *Saxon v. Sw. Airlines*, 993 F.3d 492, 497 (7th Cir. 2021)). However, the Court in *Saxon* left resolution of that question for another day. *Id.*

Earlier this year, this Court reiterated in *Bissonnette* the point it earlier made in *Saxon*—that a proper Transportation Exemption analysis does not consider the employer's industry or the nature of its operations, but rather the actual work performed by the class of workers at issue. 601 U.S. at 247. *Bissonnette* reasoned that such an industry-based analysis:

> would often turn on arcane riddles about the nature of a company's services. For example, does a pizza delivery company derive its revenue mainly from pizza or delivery? Extensive discovery might be necessary before deciding a motion to compel arbitration, adding expense and delay to every FAA case. That "complexity and uncertainty" would "'breed[ ] litigation from a statute that seeks to avoid it.'"

Id. (quoting *Circuit City*, 532 U.S. at 123). Elaborating on these concerns, this Court also observed that such expansive approaches at odds with *Saxon* would result in "mini-trials" on the Transportation Exemption test that "could become a regular, slow, and expensive practice in FAA cases." *Id. Bissonnette* closed its analysis by returning to this Court's direction that the residual clause does not permit a "sweeping, open-ended construction" and that courts must limit it "to its appropriately 'narrow'

scope." *Id.* at 256 (quoting *Circuit City*, 532 U.S. at 118). By rejecting the premise that analysis of the Transportation Exemption should allow for extensive discovery, and by reminding lower courts of the need to apply it narrowly and avoid creating complex and uncertain questions, *Bissonnette* also directly tied these points to its holding in *Saxon* and expressly invoked the need for a transportation worker to be "actively" engaged in the movement of interstate goods, measured by their "direct and necessary role" in the goods' movement. *Id.*

Saxon and *Bissonnette* both explicitly instruct courts to focus on the job duties performed by the class of workers at issue. *Bissonnette*, 601 U.S. at 253–54 ("[9 USC § 1] "focuses on 'the performance of work' rather than the industry of the employer'" and "says nothing to direct courts to consider the industry of a worker's employer. The relevant question is 'what [the worker] does'" (quoting *Saxon*, 596 U.S. at 456)); *Saxon*, 596 U.S. at 451 ("[T]he word 'engaged' [in 9 USC § 1] emphasizes the actual work that class members typically carry out. Saxon is therefore a member of a 'class of workers' based on what she frequently does at Southwest."). In this matter, the Ninth Circuit violated this instruction and focused not on what the workers do, but rather on a subjective value judgment of how important the workers' duties are to the process of transportation. Looking not to whether the workers "directly" and "physically" moved interstate goods, but instead to whether their work was a "vital component" to the movement of interstate goods, the Ninth Circuit here endorsed the first-ever application of the Transportation Exemption to a class of workers who never themselves move interstate goods nor directly supervise employees who do so.

In so doing, the Ninth Circuit has strayed from this Court's precedents, created a split within itself from another Ninth Circuit opinion that is faithful to *Saxon*'s bottom line, and a split with the First Circuit by effectively reading away *Saxon*'s "frequency" requirement from the analysis. In the handful of months since its publication, *Lopez* is already breeding litigation and creating mini-trials on motions to compel arbitration because, under *Lopez*, even employees who perform office work are now arguing they are transportation workers because what they do is "vital" to the larger process of moving goods interstate. It is critical that this Court once more intervene in lower courts' failure to narrowly construe the Transportation Exemption and adhere to its precedents.

This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. Facts and Procedural History Leading Up To The Ninth Circuit Proceedings

The Menzies Aviation enterprise, which includes the operating companies Aircraft Service International, Inc. and Menzies Aviation (USA), Inc. that are formally the Petitioners here (hereinafter collectively "Menzies"), provides a full range of aviation ground support services primarily to major international and domestic airlines throughout the world. The services include into-plane fueling and fuel farm management, and passenger and ramp handling services, among other things. Mr. Lopez worked as a fueler at Menzies' operations at Los Angeles International Airport ("LAX"). App. 18a. Fuelers like Mr. Lopez do not have any involvement in loading cargo,

passenger baggage, or any other type of goods onto or off of aircraft, nor do they supervise others who do. *See id.* at 21a. Moreover, as the District Court explicitly recognized, the jet fuel that fuelers pump into aircraft is not an interstate good. *Id.* at 22a.

Menzies maintains an Alternative Dispute Resolution Policy ("ADR Policy") for its operations in the United States, including LAX. *Id.* at 19a. Employees who choose to be bound by the ADR Policy agree that any claims arising from their employment at Menzies, other than certain categories of statutorily excluded claims, must be brought in binding arbitration. *Id.* During Mr. Lopez's employment with Menzies, Mr. Lopez executed the ADR Policy. *Id.*

Despite having done so, Mr. Lopez filed a putative class action against Menzies in the Superior Court of California, County of Los Angeles under the California Private Attorneys' General Act. *Id.* at 2a-2b. Menzies timely removed the case to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, then moved to compel arbitration. *Id.* at 2c. Mr. Lopez opposed, arguing that fuelers have a sufficient nexus to the interstate transportation of goods so as to be included within the Transportation Exemption. On reply, Menzies argued that Mr. Lopez fell outside the Transportation Exemption because, as a fueler, he had no direct involvement in the process of transporting goods because he had no physical contact with goods or cargo. *See id.* at 3a. Mr. Lopez merely put fuel onto aircraft, and jet fuel is not goods or cargo. *See id.*

The District Court applied the Transportation Exemption to Mr. Lopez and denied Menzies' motion. The District Court explained: "Although an employee who adds fuel to cargo planes is not literally moving goods (as the plaintiffs in *Saxon* and *Rittmann* did), he is closer both physically and temporally to the actual movement of goods between states than a truck mechanic who works on trucks that move goods in interstate commerce (as was the case in *Holley-Gallegly*)." App. 22a (citing *Holley-Gallegly v. TA Operating, LLC*, No. ED CV 22-593-JGB, 2022 WL 9959778 (C.D. Cal. Sept. 16, 2022), vacated, 74 F.4th 997 (9th Cir. 2023)). Accordingly, the District Court found that "fueling cargo planes that carry goods in interstate commerce is 'so closely related to interstate transportation as to be practically a part of it.'" *Id.* (quoting *Saxon*, 596 U.S. at 457). Notably, in using this language, the District Court confirmed that it was applying the Transportation Exemption without finding Mr. Lopez ever had "direct" and "physical" contact with interstate goods and "actual" involvement in their movement consistent with *Saxon*'s language—only that Mr. Lopez performed his work in close physical and temporal proximity to transportation workers and thus performed duties "closely related to" movement of goods. Menzies timely appealed to the Ninth Circuit.

II. Courts' Application Of *Saxon* During The Pendency Of The Ninth Circuit Proceedings

While this appeal was pending, federal courts published four key Transportation Exemption opinions—one by the First Circuit, one by the Ninth Circuit, one by the District of Massachusetts, and this Court's *Bissonnette* opinion. On March 3, 2023, the First Circuit

issued *Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228 (1st Cir. 2023) (*Fraga I*); on December 5, 2023, the District of Massachusetts issued *Fraga v. Premium Retail Servs., Inc.*, 704 F. Supp. 3d 289 (D. Mass. 2023) (*Fraga II*); on March 12, 2024, the Ninth Circuit issued *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152 (9th Cir. 2024); and on April 12, 2024, this Court issued the *Bissonnette* opinion. Menzies notified the panel hearing this matter before the Ninth Circuit of each of these opinions pursuant to Fed. R. App. P. 28(j).

In *Fraga I*, the First Circuit considered a class of workers called display merchandisers whose primary job duties did not include the movement of interstate goods. On occasion however, merchandisers received marketing and promotional materials at their homes and had responsibility for directly transporting the materials to their assigned stores for display. *Fraga I*, 61 F.4th at 230. The First Circuit held that this direct physical movement of interstate goods could be enough to trigger the Transportation Exemption, so long as these particular duties were performed frequently enough to satisfy *Saxon*'s second prong. *Id*. at 237. The First Circuit remanded the case for fact finding on frequency, and advised the lower court that "two or more hours most every day"—which would equate to roughly 25% of the employee's working time—"would seem to be work that was performed frequently." *Id.* at 237. On remand, the District of Massachusetts compared the relevant job duties to "a worker sorting goods in a warehouse during their interstate journey." *Fraga II*, 704 F. Supp. 3d at 297. Despite this direct, physical relationship with the goods, the plaintiff, as the party resisting arbitration and thus bearing the burden of proving the claims were not suitable

for arbitration, had not demonstrated that she performed such direct physical work with the goods with sufficient frequency. *Id.* at 297–98 (citing *Green Tree Fin. Corp. v. Rudolph*, 531 U.S. 79, 91 (2000)).

In *Ortiz*, the Ninth Circuit applied the Transportation Exemption to warehouse workers who themselves physically move interstate goods within a warehouse. Central to *Ortiz*'s analysis was the fact that even though the workers at issue only physically handled and moved goods short distances, they nevertheless physically handled and moved the goods. 95 F.4th at 1160, 1162–63 ("*Saxon*'s bottom line is that . . . an employee's relationship to movement of the goods must be sufficiently close enough . . . that his work plays a tangible and meaningful role in their progress through . . . interstate commerce" and "Though Ortiz moved goods only a short distance . . . *he nevertheless moved them*. And not only did he move them, he did so with the purpose of facilitating their continued travel") (emphasis supplied). *Ortiz* also rejected the argument that it is improper for courts to focus only on the goods—thus reinforcing *Saxon*'s language that application of the Transportation Exemption starts from the perspective of who "directly" and "physically" moves the goods. *Id.* at 1164 ("*Saxon* did not improperly shift its focus away from Saxon's work by accounting for the *inescapable fact that her job required her to handle goods* . . . Rather, the Court could only understand the extent to which Saxon contributed to the interstate commerce of baggage after it understood that Saxon's job . . . *involved handling bags as they traveled interstate*") (emphasis added). Further emphasizing the importance of *Saxon*'s repeated invocation of "direct," "actual" and "physical" language, *Ortiz* acknowledged that employees "who do

not transport products across great distances and interact with interstate commerce on a purely local basis present[s] a particularly difficult interpretative issue," *id.* at 1159, but nonetheless faithfully applied *Saxon* by virtue of its emphasis on the plaintiff 's physical handling and directly moving of goods even if only over short distances.

As noted *supra*, this Court's *Bissonnette* opinion reiterated that the Transportation Exemption analysis depends on what the class of workers does, not the employer's industry and the nature of its business. 601 U.S. at 247. Given that *Saxon* had already explained this, *Bissonnette* is as important for the rationale behind its holding as it is for its holding—the notion that application of the Transportation Exemption under *Saxon* is straightforward and turns on practical facts, not amorphous and nebulous concepts. *Bissonnette* communicates this through its cautioning against "mini-trials" that "could become a regular, slow, and expensive practice in FAA cases" and its invocation of *Saxon*'s precise language to remind lower courts that the residual clause does not permit a "sweeping, open-ended construction" and that courts must limit it "to its appropriately 'narrow' scope." *Id.* at 256 (quoting *Circuit City*, 532 U.S. at 118).

III. The Ninth Circuit's Creation Of A "Vital Component" Test Weighing The Importance Of Work To Transportation, Not The Duties Workers Perform

On July 19, 2024, the Ninth Circuit issued its opinion in this case. The opinion is published and precedential. 9th Cir. R. 36-1 to 36-3. It rejected Menzies' arguments that *Saxon*'s plain and practical language, as understood through *Bissonnette*'s cautions, requires that workers

must themselves move goods to satisfy the "direct," "actual" and "physical" components of the Transportation Exemption analysis, contending that "[t]he Supreme Court did not impose a requirement in *Saxon* that the worker must have hands-on contact with goods and cargo or be directly involved in the transportation of the goods." App. 12a. Without consideration of *Saxon*'s repeated use of "direct," "actual" and "physical" terminology, the Ninth Circuit affirmed the District Court and held that the Transportation Exemption applies to a class of workers that have no direct and physical involvement in moving interstate goods. The Ninth Circuit reached this conclusion because "[Mr.] Lopez's fueling of the plane—a *vital component* of its ability to engage in the interstate and foreign transportation of goods—is 'so closely related to interstate and foreign commerce as to be in practical effect part of it.'" App. 11a (emphasis supplied) (quoting *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 911 (9th Cir. 2020)).

Menzies timely petitioned for rehearing *en banc* arguing that the Ninth Circuit's opinion in this case (i) constitutes an unprecedented departure from *Saxon* because it is the first case to ever apply the Transportation Exemption to a class of workers that do not themselves physically or directly move interstate goods or even supervise workers who themselves move interstate goods; (ii) will cause nationwide confusion for courts applying the Transportation Exemption based on its amorphous "vital component" analysis; (iii) represents a broad interpretation of the Transportation Exemption that will spawn litigation, contrary to this Court's directive in *Circuit City*; (iv) creates a complicated, subjective test contrary to this Court's directive in *Bissonnette* to keep

any FAA test simple; and (v) creates a conflict within the Ninth Circuit (with *Ortiz*) and with the First Circuit (with *Fraga*), decisions that faithfully applied *Saxon*'s direct, physical, active, and frequent requirements. The Ninth Circuit denied *en banc* review on August 29, 2024. This petition followed.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's *Lopez* Decision Is An Unprecedented Departure From *Saxon*'s Careful Language That Creates An Impermissibly Broad "Vital Component" Test

The Ninth Circuit's and the District Court's decisions represent the first time ever federal courts have applied the Transportation Exemption to a class of workers who do not themselves move interstate goods or supervise workers who do.[2] The Ninth Circuit panel conceded that Mr. Lopez had no direct or physical involvement in the movement of interstate goods. App. 11a-13a. Pursuant to *Saxon*'s language and *Bissonnette*'s cautions, that concession alone should have guided the panel's analysis. Instead, the Ninth Circuit fashioned its own analysis untethered to *Saxon*'s language and instead based

2. *Palcko v. Airborne Express, Inc.*, 372 F.3d 588 (3rd Cir. 2004), is the only circuit court opinion to uphold application of the Transportation Exemption to workers who only supervise those who directly move interstate goods but do not move the goods themselves. *Saxon*'s footnote questioning but leaving for a later day whether such supervisors are transportation workers raises doubts whether the *Palcko* decision remains viable. In any event, there is no dispute here that the class of workers had no supervision over workers who themselves move interstate goods.

on whether the work involved is a "vital component" to interstate transportation, and then held that the Transpiration Exemption applies to fuelers who pump fuel into airplanes. App. 15a. The new test created by the Ninth Circuit is an unprecedented departure from *Saxon* that relies on inapposite precedent addressing the importance of whether workers cross state lines—an issue not relevant here. Furthermore, the new test violates this Court's directives in *Circuit City* and *Bissonnette* about interpreting the Transportation Exemption narrowly and keeping Transportation Exemption analyses simple so as to avoid breeding litigation out of a statute intended to avoid it.

A. *Lopez* Is An Unprecedented Departure From *Saxon*

Relying on *Rittmann*, where the Ninth Circuit analyzed the inapposite question whether workers who directly and physically handled goods could qualify as Transportation Workers despite never crossing state lines,[3] the Ninth Circuit reasoned that "[Mr.] Lopez's fueling of the plane—a vital component of its ability to engage in the interstate and foreign transportation of goods—is 'so closely related to interstate and foreign commerce as to be in practical effect part of it.'" App. 11a (emphasis supplied).

The "vital component" test is essentially a rejection of *Saxon*. Casting aside Menzies' argument for a strict and faithful application of *Saxon*, the Ninth Circuit panel stated: "The Supreme Court did not impose a

3. *See Rittmann*, 971 F.3d at 909.

requirement in *Saxon* that the worker must have hands-on contact with goods and cargo or be directly involved in the transportation of the goods." App. 12a. But *Saxon* effectively did just that, and *Bissonnette* reiterates that the Transportation Exemption analysis does not allow for amorphous and expansive questions like what constitutes a "vital component" to an aircraft's ability to transport interstate goods.

Saxon summarized this Court's FAA doctrine as follows:

> Taken together, these canons showed that [the Transportation Exemption] exempted only contracts with transportation workers, rather than all employees, from the FAA. And, while we did not provide a complete definition of 'transportation worker,' we indicated that any 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.

Saxon, 596 U.S. at 458 (quoting *Circuit City*, 532 U.S. at 119, 121) (emphasis supplied). Throughout the *Saxon* opinion, this Court then described what "direct and necessary" and "active engagement in transportation" means in practical terms through its repeated focus on the fact that the class of workers themselves physically loaded and unloaded aircraft and thus had a clear and direct relationship with interstate goods. *Id.* at 453, 456–60 ("Her work frequently requires her to load and

unload baggage, airmail, and commercial cargo") (ramp agents "physically load and unload baggage, airmail and freight") ("Frequently, ramp supervisors step in to load and unload cargo alongside ramp agents") ("Saxon belongs to a class of workers who physically load and unload cargo on and off airplanes on a frequent basis") ("We think it equally plain that airline employees who physically load and unload cargo on and off planes traveling in interstate commerce are, as a practical matter, part of the interstate transportation of goods") ("Likewise, any class of workers that loads or unloads cargo on and off airplanes bound for a different State or country is 'engaged in foreign or interstate commerce'"). The Court then re-emphasized the importance of this language and its easy-to-apply nature in *Bissonnette*, where it reminded lower courts that the residual clause does not permit a "sweeping, open-ended construction" and that courts must limit it "to its appropriately 'narrow' scope." *Id*. at 256 (quoting *Circuit City*, 532 U.S. at 118).

The Ninth Circuit's analysis in *Lopez* and the outcome it reached cannot and do not follow this Court's precedents, and its turn to what qualifies as a "vital component" is effectively a rejection of *Saxon* because it disregards the second part of the *Saxon* test. *Saxon* and *Bissonnette* both explicitly instruct courts to focus on what the class of workers does. The *Lopez* analysis focuses not on what the workers do, but rather a court's subjective view of the importance of a workers' efforts in the larger mechanism of transportation. Understood this way, the *Lopez* analysis simply does not apply and follow the test mandated by *Saxon*.

If *Lopez* remains good law, then going forward, courts considering the Transportation Exemption must essentially apply two tests. First, courts will have to apply *Saxon* and consider whether an employee has a direct, physical role in the transportation of interstate goods. Under *Saxon*, if the answer is no, that ends the analysis. Under *Lopez* however, if the answer is no, courts must still ask whether the worker's role is a vital component to the transportation of interstate goods and grapple with what qualifies as sufficiently "vital."

These are two entirely different analyses. Whether a worker has a direct and physical role in moving interstate goods is a simple question to answer that will not require mini-trials or extensive discovery. And as the *Fraga* cases reinforce, *Saxon*'s "frequency" requirement becomes essentially meaningless if untethered from how often the class of workers directly move interstate goods. By contrast, determining whether a worker's role is a vital component in interstate travel, so closely related to the transportation of goods as to be essential a part of it, is not so simple. Answers to these questions will not be found in job descriptions or simple testimony from workers or their supervisors, and will instead allow for discovery and argument about what qualifies as "vital." If aircraft fuelers are vital, what else might be vital? Mechanics who never touch goods or cargo but who play a necessary role in keeping aircraft flying? Air traffic controllers who never touch goods or cargo but control the movement of aircraft? Engineers and assembly line workers who design, manufacture, and supply the equipment that creates the airplanes? Patentholders who own the patents for the technology necessary to make the airplanes?

The Ninth Circuit's "vital component" analysis also effectively reads away the "frequency" element from *Saxon*. A worker's role is either a vital component closely related to interstate commerce, or it is not. For example, if a Boeing engineer is vital because she designed the aircraft used in interstate transportation, there is no need to inquire into how frequently she designs new planes. In other words, the "active" and "frequent" requirements set forth in *Saxon* lose practical meaning absent their connection to their counterpart—the "direct, physical" movement of goods. The "vital component" test—if left unchanged—represents a complete alternative framework to *Saxon* that does not square with *Saxon* and violates *Bissonnette*'s instructions not to allow a simple motion to compel arbitration to devolve into a mini-trial.

B. The Ninth Circuit's Reliance On *Rittmann* Is Improper

As explained above, the Ninth Circuit's reliance on *Rittmann*, a pre-*Saxon* decision, was improper. Put bluntly, *Rittmann* is completely irrelevant to the questions raised by this case. In *Rittmann*, the Ninth Circuit considered whether workers who physically handled interstate goods but did not transport them across state lines qualified as transportation workers. *See* 971 F.3d at 907. The narrow issue was whether the Transportation Exemption turns on the crossing of state lines. Menzies has never argued that the physical movements of fuelers like Mr. Lopez have any bearing on the analysis, and for good reason: *Saxon* put any lingering doubts about that issue to rest by applying the Transportation Exemption to a class of workers that performed all their duties at one airport. *See Saxon*, 993 F.3d at 494, *aff'd*, 596 U.S. 450.

The crossing of state lines is not and has never been an issue in this matter, meaning *Rittmann*'s analysis has no relevance and the Ninth Circuit was wrong to use it to fashion a "vital component" test. What matters here is the same thing that mattered in *Ortiz*: "[N]ot the worker's geography but his work's connection with—and relevance to—the interstate flow of goods." *Ortiz*, 95 F.4th at 1162. Accordingly, because it arises out of *Rittmann*, the Ninth Circuit's test rests on a faulty foundation.

C. *Lopez* Violates The Requirement To Construe The Transportation Exemption Narrowly

The Ninth Circuit's "vital component" test broadens the Transportation Exemption, injects complexity and unpredictability, and will undoubtedly spawn litigation—indeed, as noted *infra*, it has already begun to do so. This goes directly against this Court's repeated instruction to give the Transportation Exemption "a narrow construction." *Circuit City*, 532 U.S. at 118. Lower courts are to avoid constructions that 'breed[ ] litigation from a statute that seeks to avoid it,'" *id.* at 123, and that prompt "[e]xtensive discovery" which would "add[ ] expense and delay to every FAA case." *Bissonnette*, 601 U.S. at 247.

Lopez does the opposite. It marks a novel expansion of the Transportation Exemption, resulting in its first-ever application to workers who never directly handle interstate goods nor supervise workers who do. It is the first post-*Saxon* case to apply the Transportation Exemption without any objectively discernable facts to drive the legal analysis. *Saxon* asks whether a worker has "direct" and "physical" involvement with the movement of interstate goods—questions easily answered by facts drawn from

a job description, employee testimony, or supervisor testimony. The same is true for discerning whether the involvement is "frequent." However, discerning whether a worker's role is a "vital component" to the movement of interstate goods, or whether it is "so closely related to interstate and foreign commerce as to be in practical effect part of it" calls on subjective judgments about nebulous concepts. How far do courts draw such lines and how do they justify them against *Saxon*'s suggestion that even mere supervision of transportation workers without performing direct physical movement of goods might be enough to fall outside the narrow Transportation Exemption? 596 U.S. at 456 n.1.

By introducing this nebulous, subjective alternative to *Saxon*, the Ninth Circuit's decision swings wide open the door for workers to argue that the Transportation Exemption should apply to them even if they do not have any relationship to goods. But courts need standards they can apply in this arena consistently and uniformly, and this Court has filled this need with the clear instructions from *Saxon* and *Bissonnette*. The Ninth Circuit's *Lopez* opinion departs from these standards and does the opposite, begging the questions of "how far does 'so closely related' go and what qualifies as a 'vital component' of an interstate vehicle's ability to make its journey?" Once more, it seems the lower courts require this Court to reiterate that the FAA is a statute that seeks to avoid litigation and requires narrow construction, not mini-trials on nebulous questions.

II. *Lopez* Creates An Intra-Circuit Conflict (With *Ortiz*) And An Inter-Circuit Conflict With The First Circuit (With *Fraga*)

As noted *supra*, another panel in the Ninth Circuit issued *Ortiz* four months before *Lopez*'s publication. In applying the Transportation Exemption to a class of workers who themselves physically move goods within a warehouse, the *Ortiz* panel carefully anchored its analysis on *Saxon*'s "bottom line" and followed its meaning through repeated signaling of the importance that workers directly handle goods even if only moving them a short distance. 95 F.4th at 1160–64 ("The basic fact that *Saxon* moved the bags across only a small distance does not change that she moved the baggage as part of its interstate travel") ("Though Ortiz moved goods only a short distance . . . he nevertheless moved them") ("*Saxon* did not improperly shift its focus away from Saxon's work by accounting for the *inescapable fact that her job required her to handle goods* . . . Rather, the Court could only understand the extent to which Saxon contributed to the interstate commerce of baggage after it understood that Saxon's job *. . . involved handling bags as they traveled interstate*") (emphasis supplied). By faithfully following *Saxon* by virtue of its emphasis on the plaintiff 's physical handling and directly moving goods, *Ortiz* affords a pragmatic (and therefore narrow) application of the Transportation Exemption consistent with the mandates of *Circuit City* and *Bissonnette*.

Unlike *Ortiz*, *Lopez* fails to confront *Saxon*'s language detailing the need for "direct," "physical," "active" and "frequent" involvement with the movement of goods. Taken together, *Ortiz* and *Lopez* create a fracture within

the Ninth Circuit—there are, effectively, two different (and disharmonious) analyses for deciding whether to apply the Transportation Exemption, one that explicitly identifies and follows *Saxon*'s "bottom line" and another that depends on language from *Rittmann* relating to inapposite geographic movement to find fuelers' work a "vital component" of an aircraft's movement. The *Lopez* opinion also offers no meaningful consideration of *Ortiz*'s analysis or discussion of how the two outcomes can work in tandem, let alone how district courts can apply both cases consistently. *Ortiz*, grounded in analysis emphasizing the same direct, physical relationship with the goods key to *Saxon*, is the better authority because (1) it faithfully follows this Court's directives in *Circuit City*, *Saxon* and *Bissonnette*, and (2) it is a simple, workable framework that turns on objective facts, whereas the novel test established in *Lopez* turns on nebulous and subjective value judgments, which will produce varying outcomes, increase litigation, and reduce the predictability of the law in this space.

Lopez also conflicts with the *Fraga I* decision issued by the First Circuit and the District of Massachusetts' subsequent application of *Fraga I* in *Fraga II*. The *Fraga* cases turned on the frequency by which workers handled and moved interstate goods. The First Circuit found that the class of workers at issue (merchandisers who physically sort, load, and transport goods) had *some* direct physical contact with and movement of goods but remanded the case for fact-finding on whether the merchandisers could satisfy their burden to demonstrate that they directly and *frequently* engaged in such tasks as required by *Saxon*. *Fraga I*, 61 F.4th at 237. On remand, after careful scrutiny of the evidence, the district court

declined to apply the Transportation Exemption. It found that the merchandisers' direct movement of goods occurred a couple of times a week for no more than an hour at a time, which the district court held was insufficiently frequent to trigger the Transpiration Exemption. *Fraga II*, 704 F. Supp. 3d at 297. By understanding that *Saxon*'s "frequency" requirement can only be measured against *Saxon*'s counterpart requirement—the "direct, physical" movement of goods—the *Fraga* cases reinforce the principle that "direct handling" is the "central feature of a transportation worker" for purposes of the Transportation Exemption. *Saxon*, 596 U.S. at 459.

The analysis crafted by the Ninth Circuit in *Lopez* effectively creates a split amongst the First and Ninth Circuits. One decision understands the paramount importance of frequent direct handling and movement of interstate goods, the other effectively erases that frequency requirement by focusing on the impact the employee's duties have on transportation rather than what the workers' duties are. Were *Lopez* binding on the First Circuit when it decided *Fraga*, the *Fraga* panel would have had to conduct an entirely different analysis. Before it could have remanded the case to the district court, it would have had to consider how important merchandisers are to the transportation process, making the "frequency" analysis practically irrelevant and unnecessary.

For the same reasons as *Ortiz*, Menzies submits that *Fraga I*, grounded in analysis emphasizing the workers' direct, physical relationship with the goods and the frequency by which the workers move such goods that is key to *Saxon*, is the better authority.

III. If *Lopez* Is Left Uncorrected, It Will Continue To Breed Litigation And Is Already Doing So

Before the case reached this Court, the Ninth Circuit in *Circuit City Stores, Inc. v. Adams*, 194 F.3d 1070 (9th Cir. 1999) gave the Transportation Exemption a sweeping interpretation, applying it to all employment contracts. This Court reversed, cautioning that:

> The considerable complexity and uncertainty that the construction of [the Transportation Exemption] urged by respondent would introduce into the enforceability of arbitration agreements in employment contracts would call into doubt the efficacy of alternative dispute resolution procedures adopted by many of the Nation's employers, in the process undermining the FAA's proarbitration purposes and "breeding litigation from a statute that seeks to avoid it."

Circuit City, 532 U.S. at 118 (citing *Allied-Bruce*, 513 U.S. at 275). The Second Circuit similarly erred in *Bissonnette v. LePage Bakeries Park St., LLC*, 49 F.4th 655 (2d Cir. 2022), prompting this Court to explain that straying from a surgical focus on what workers themselves do will result in Transportation Exemption analysis that:

> would often turn on arcane riddles about the nature of a company's services. For example, does a pizza delivery company derive its revenue mainly from pizza or delivery? Extensive discovery might be necessary before deciding a motion to compel arbitration, adding expense

> and delay to every FAA case. That "complexity and uncertainty" would "'breed[ ] litigation from a statute that seeks to avoid it.'"

Bissonnette, 601 U.S. at 247. The Ninth Circuit's *Lopez* opinion repeats the fundamental error of giving broad interpretation of the Transportation Exemption that creates "considerable complexity and uncertainty" likely to "breed litigation from a statute that seeks to avoid it." *Bissonnette*, 601 U.S. at 247; *see Circuit City*, 532 U.S. at 123.

These are not hyperbolic concerns about what may happen if this Court allows *Lopez* to stand; rather, the Pandora's Box opened by the opinion is already playing out in real time. Menzies and district courts are already experiencing the adverse effects of the Ninth Circuit's expansive interpretation of the Transportation Exemption, and Menzies is currently preparing for classification-by-classification mini trials on motions to compel arbitration. For example, in *Joyner et al. v. Frontier Airlines, Inc. et al.*, No. 24-CV-01672-SKC-KAS, the District of Colorado has before it a fully briefed motion filed by Menzies seeking to compel arbitration of claims brought by a class of Customer Service Agents who virtually never directly handle passenger baggage. The plaintiffs have cited *Lopez* in opposition to arbitration, arguing that the work of Customer Service Agents is critical to the process of transporting interstate goods. If the District of Colorado relies on *Lopez* to deny arbitration instead of focusing on the class of workers' direct relationship with interstate cargo and frequency thereof, it will create another ruling at odds with *Saxon*, *Bissonnette*, and the *Fraga* cases.

Even more troublesome is *Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, where the Central District of California will soon be asked to rule on a motion to compel arbitration that the plaintiffs are resisting with respect to every Menzies non-exempt classification in California—including administrative assistants, recruiters and other office personnel.[4] Before *Lopez*, it would have been frivolous to argue that a recruiter working a desk job triggers the Transportation Exemption merely because her work is "vital" to transportation since employers cannot conduct their business if they cannot fill the positions responsible for moving interstate goods. *Bissonnette* clearly rejects this premise, yet relying on *Lopez*, litigants like the plaintiffs

4. As of the submission of this petition, Menzies has yet to file the motion to compel arbitration in *Amaya* but anticipates doing so within weeks of this petition's filing such that this Court will have the opportunity to review those filings to understand the scope of the classifications involved and their lack of direct involvement in the movement of interstate goods. However, Central District of California Local Rule 7-3 requires the parties to meet and confer prior to the filing of any motion, and in compliance with that Local Rule, Menzies sought to narrow the classes of workers subject to the motion to those classifications that might be considered a "close call" and stipulate that seemingly obvious classifications like office personnel are subject to arbitration. Plaintiffs have refused, claiming classifications such as recruiters are indispensable to Menzies' larger operations and therefore qualify as transportation workers under *Lopez*. The delay in bringing the motion to compel arbitration thus arises from Menzies' regrettable need to develop extensive evidence with respect to each of the many dozens of classifications at issue, which has included in recent weeks days of depositions and written discovery. It seems inevitable that the Central District of California in *Amaya* will have to engage in the exact types of "mini-trials" against which this Court has cautioned.

in the *Amaya* case are making these exact arguments against Menzies in current litigation, and Menzies can only presume others are making similar arguments against other companies in cases of which Menzies is unaware.

If *Lopez* remains good law, anyone whose job duties have some non-incidental bearing on the process of moving interstate goods will have the ability to clog district courts with arguments that their work is a "vital component" to that process. This will almost certainly lead to disparate results and unnecessary appellate litigation likely to result in future circuit splits regarding what is sufficiently "vital" to movement of interstate goods. *Amaya* and *Joyner* are but two early examples of what is sure to continue. The practical consequence is this: any employer that has some involvement in the movement of interstate goods will need to decide between (1) being mired in FAA litigation, or (2) foregoing an alternative dispute resolution policy. This dilemma—created by *Lopez*—violates the spirit of the FAA.

This Court should thus grant certiorari and reverse to cure this violation of the FAA and not allow it to persist.

CONCLUSION

The Court should step in now and clarify that workers who do not physically or directly move interstate goods or even supervise workers who move interstate goods are not "transportation workers" under the FAA, even if they somehow play an undefined and amorphous "vital role" in commerce. The Court should grant the petition for certiorari and reverse.

Dated this November 26, 2024.

Respectfully submitted,

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APPENDIX

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 19, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55015
D.C. No. 2:21-cv-07108-DMG-E

DANNY LOPEZ, INDIVIDUALLY, AND
ON BEHALF OF ALL OTHER
AGGRIEVED EMPLOYEES,

Plaintiff-Appellee,

v.

AIRCRAFT SERVICE INTERNATIONAL, INC.,
A CORPORATION; MENZIES AVIATION (USA),
INC., A CORPORATION,

Defendants-Appellants.

Appeal from the United States District Court
for the Central District of California
Dolly M. Gee, Chief District Judge, Presiding

Argued and Submitted January 8, 2024
Pasadena, California

Filed July 19, 2024

Appendix A

Before: Johnnie B. Rawlinson, Michael J. Melloy,* and Holly A. Thomas, Circuit Judges.

OPINION

RAWLINSON, Circuit Judge:

Aircraft Service International, Inc. and Menzies Aviation (USA), Inc. (collectively, Menzies) appeal the district court's denial of their motion to compel arbitration in an action brought by Danny Lopez (Lopez), an airline fuel technician employed by Menzies, alleging that Menzies violated California's wage, meal period, and rest period requirements. Menzies contends that the district court erred in holding that, as a transportation worker engaged in foreign or interstate commerce, Lopez was exempt from the arbitration requirements imposed by the Federal Arbitration Act (FAA). Menzies asserts that Lopez's fueling of airplanes that carried goods in interstate and foreign commerce was insufficient to support an exemption under the FAA. We have jurisdiction pursuant to 9 U.S.C. § 16, and we affirm the district court's denial of Menzies's motion to compel arbitration.

I. BACKGROUND

Lopez filed a complaint in California Superior Court "on behalf of himself and all other aggrieved employees"

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* The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

of Menzies. Lopez alleged that Menzies failed to provide the meal periods, rest periods, overtime wages, minimum wages, copies of records, wages earned during employment, and itemized wage statements required by California law.

Menzies removed the action to federal court, and filed a motion to compel arbitration. Menzies maintained that arbitration of Lopez's claims was mandated by the arbitration agreement signed "[i]n connection with his employment." Lopez opposed the motion to compel arbitration.

In addition to challenging the enforceability of the arbitration agreement, Lopez asserted that he belonged to a class of transportation workers engaged in foreign or interstate commerce that is exempt from the provisions of the FAA requiring arbitration. In a declaration, Lopez explained that he was employed by Menzies as a field technician "in the fueling department at Los Angeles International Airport," and that he "physically added fuel to both passenger and cargo airplanes involved in both foreign and domestic interstate travel."

The district court denied Menzies' motion to compel arbitration. The district court observed that Menzies did "not contest Lopez's description of his work, or offer additional evidence about the nature of that work." Rather, Menzies argued that Lopez is not exempt from arbitration because he "does not handle *goods* in commerce." The district court disagreed. Contrasting Lopez with a truck mechanic whom another district court had found ineligible

for the transportation worker exemption, the district court reasoned that:

> [a]lthough an employee who adds fuel to cargo planes is not literally moving goods (as the plaintiffs in *Saxon*[1] and *Rittmann*[2] did), he is closer both physically and temporally to the actual movement of goods between states than a truck mechanic who works on trucks that move goods in interstate commerce.

Relying on the Fifth Circuit's decision in *Wirtz v. B. B. Saxon Co.*, 365 F.2d 457 (5th Cir. 1966), the district court held that, because

> the act of fueling cargo planes that carry goods in interstate commerce is so closely related to interstate transportation as to be practically a part of it . . . , Lopez, whose duties included physically adding fuel to planes, was directly involved in the transportation itself, not only the maintenance of the means by which goods were transported.

As a result, the district court "conclude[d] that Lopez is exempt from the [arbitration] requirements of the FAA."

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1. *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 142 S. Ct. 1783, 213 L. Ed. 2d 27 (2022).

2. *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 907 (9th Cir. 2020).

Menzies filed a timely notice of appeal.

II. STANDARDS OF REVIEW

"We review a denial of a motion to compel arbitration de novo and findings of fact underlying the district court's decision for clear error." *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1008 (9th Cir. 2023) (citation, alteration, and internal quotation marks omitted).

III. DISCUSSION

The District Court's Denial of Menzies' Motion To Compel Arbitration

The FAA does not "apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1; *see also Rittmann*, 971 F.3d at 909. Menzies maintains that, under *Saxon*, Lopez did not belong to a class of transportation workers engaged in foreign or interstate commerce because he did not have any hands-on contact with goods and direct participation in their interstate movement.

In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 109, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001), the Supreme Court concluded that the FAA exemption was confined to transportation workers. The Supreme Court opined that the exemption's residual clause encompassing "any other class of workers engaged in [interstate] commerce . . . should be read to give effect to the terms 'seamen'

and 'railroad employees,' and should itself be controlled and defined by reference to the enumerated categories of workers which are recited just before it." *Id.* at 114-15 (alteration omitted).[3] The Supreme Court emphasized that the statutory phrase "engaged in commerce . . . means engaged in the flow of interstate commerce, and was not intended to reach all corporations engaged in activities subject to the federal commerce power." *Id.* at 117 (citations and internal quotation marks omitted). The Supreme Court also observed that it was "reasonable to assume that Congress excluded 'seamen' and 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Id.* at 121.

Saxon, decided over twenty years after *Circuit City*, involved a ramp supervisor who was "frequently require[d] . . . to load and unload baggage, airmail, and commercial cargo on and off airplanes that travel across the country." 596 U.S. at 453. In *Saxon*, the Supreme Court further clarified the exemption for transportation workers,

3. The Supreme Court explained that "the words 'any other class of workers engaged in commerce' constitute a residual phrase, following, in the same sentence, explicit reference to 'seamen' and 'railroad employees.'" *Circuit City*, 532 U.S. at 114 (alteration omitted). "Construing the residual phrase to exclude all employment contracts fails to give independent effect to the statute's enumeration of the specific categories of workers which precedes it; there would be no need for Congress to use the phrases 'seamen' and 'railroad employees' if those same classes of workers were subsumed within the meaning of the 'engaged in commerce' residual clause. . . ." *Id.* (alteration omitted).

explaining that as used in the FAA, "[t]he word 'workers' directs the interpreter's attention to 'the *performance* of work,'" and "the word 'engaged'—meaning occupied, employed, or involved—similarly emphasizes the actual work that the members of the class, as a whole, typically carry out." *Id.* at 456 (citations, alterations, and internal quotation marks omitted) (emphasis in the original). The Supreme Court opined that "any class of workers directly involved in transporting goods across state or international borders falls within [9 U.S.C.] § 1's exemption." *Id.* at 457. The Supreme Court, therefore, thought it "plain that airline employees who physically load and unload cargo on and off planes traveling in interstate commerce are, as a practical matter, part of the interstate transportation of goods." *Id.* And the Supreme Court expounded that any worker qualifying for the exemption "must at least play a direct and necessary role in the free flow of goods across borders," and that "transportation workers must be actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." *Id.* at 458 (citations and internal quotation marks omitted).

The Supreme Court concluded that "[c]argo loaders exhibit this central feature of a transportation worker" because "one who loads cargo on a plane bound for interstate transit is intimately involved with the commerce (e.g., transportation) of that cargo." *Id.* Distinguishing prior cases, the Supreme Court observed:

> [u]nlike those who sell asphalt for intrastate construction or those who clean up after

> corporate employees, our case law makes clear that airplane cargo loaders plainly do perform activities within the flow of interstate commerce when they handle goods traveling in interstate and foreign commerce, either to load them for air travel or to unload them when they arrive.

Id. at 462-63 (citation and internal quotation marks omitted).[4]

In *Rittmann*, a case decided prior to *Saxon*,[5] we considered whether Amazon's AmFlex delivery drivers,

4. In *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 144 S. Ct. 905, 218 L. Ed. 2d 204 (2024), a case involving plaintiffs who "worked as distributors" for a "producer and marketer of baked goods," *id.* at 248, the Supreme Court considered "whether a transportation worker must work for a company in the transportation industry to be exempt under § 1 of the FAA." *Id.* at 252 (footnote reference omitted). In holding that "[a] transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by § 1 of the Act," the Supreme Court "express[d] no opinion on any alternative grounds in favor of arbitration . . . including that petitioners are not transportation workers and that petitioners are not 'engaged in foreign or interstate commerce' within the meaning of § 1 because they deliver baked goods only in Connecticut." *Id.* at 256. Focusing on the work performed, the Supreme Court reiterated that, under the FAA, "any exempt worker must at least play a direct and necessary role in the free flow of goods across borders." *Id.* (citation and internal quotation marks omitted); *see also id.* at 255 (noting that the "classes of workers" referenced in the exemption "are connected by what they do").

5. We have held that there is "no clear conflict between *Rittmann* and *Saxon*." *Carmona v. Domino's Pizza, LLC*, 73 F.4th 1135, 1137 (9th Cir. 2023).

employed to "make last mile deliveries of products from Amazon warehouses to the products' destinations," were transportation workers exempt from the FAA's enforcement provisions. 971 F.3d at 907 (internal quotation marks omitted). We noted that, when enacted, the FAA defined "commerce" as:

> Intercourse by way of trade and traffic between different people or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well as of goods, both by land and by sea.

Id. at 910 (citation omitted). We concluded that a worker was engaged in interstate and foreign commerce when "her work was so closely related to interstate and foreign commerce as to be in practical effect part of it." *Id.* at 911 (citation, alteration, footnote reference, and internal quotation marks omitted).

Relying on cases addressing employment in interstate commerce for purposes of the Federal Employees Liability Act (FELA), we observed that,

> [p]rior to the FAA's enactment in 1925, the Supreme Court articulated that the true test of such employment in such commerce in the sense intended is, was the employee, at the time of the

> injury, engaged in interstate transportation, or in work so closely related to it as to be practically a part of it?

Id. at 912 (citation, alterations, and internal quotation marks omitted). "In incorporating almost exactly the same phraseology into the Arbitration Act of 1925 its draftsmen and the Congress which enacted it must have had in mind this current construction of the language which they used." *Id.* at 913 (citation omitted).

We further observed that "the Supreme Court has held that the actual crossing of state lines is not necessary to be engaged in commerce for purposes of the Clayton and Robinson-Patman Acts." *Id.* (internal quotation marks omitted).

> In a pair of cases decided in the same term, the Court clarified that Congress's use of the term 'engaged in commerce' was a limited assertion of its jurisdiction, and denoted only persons or activities within the flow of interstate commerce—the practical, economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer. . . ." *Id.* (citation, alteration, and some internal quotation marks omitted). Based on analogous language in other statutes, we emphasized that "a class of workers must themselves be engaged *in the channels* of foreign or interstate commerce."

Id. at 916-17 (citation, footnote reference, and internal quotation marks omitted) (emphasis in the original).

After considering the meaning of "engaged in commerce" in other statutes, the nature of Amazon's business, and the involvement of intrastate delivery drivers in the channels of interstate commerce, we determined that Amazon's AmFlex workers were exempt from the FAA. We explained that "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 (footnote reference omitted). As a result, "AmFlex delivery providers [fell] within the exemption, even if they [did] not cross state lines to make their deliveries." *Id.* at 919.

Following the analytical approach applied in *Rittmann*, we conclude that a fuel technician who places fuel in an airplane used for foreign and interstate commerce is a transportation worker engaged in commerce because a fuel technician "play[s] a direct and necessary role in the free flow of goods across borders." *Saxon*, 596 U.S. at 458 (citation and internal quotation marks omitted). Lopez's fueling of the airplane—a vital component of its ability to engage in the interstate and foreign transportation of goods—is "so closely related to interstate and foreign commerce as to be in practical effect part of it." *Rittmann*, 971 F.3d at 911 (citation and alteration omitted). Thus, Lopez was engaged "in the *channels* of foreign or interstate commerce" for purposes of the FAA exemption. *Id.* at 916-17 (citation, footnote reference, and internal

quotation marks omitted) (emphasis in the original); *see also Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152, 1161-62 (9th Cir. 2024) (concluding that workers whose "job duties included exclusively warehouse work" were transportation workers because they "fulfilled an admittedly small but nevertheless direct and necessary role in the interstate commerce of goods") (internal quotation marks omitted).[6]

The Supreme Court did not impose a requirement in *Saxon* that the worker must have hands-on contact with goods and cargo or be directly involved in the transportation of the goods. Instead, the Supreme Court recognized that workers may be exempt from the FAA

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6. Amicus Airlines For America asserts that the district court's decision "creat[ed] significant line-drawing problems and undermine[d] the FAA's proarbitration purpose." However:

> line-drawing is a product of *Circuit City* itself. In concluding that the residual clause does not encompass all employment contracts, but only those of transportation workers, the Court left it to the lower courts to assess which workers fall within that category. Doing so unavoidably requires the line-drawing that courts often do.

Rittmann, 971 F.3d at 918 (citation and internal quotation marks omitted). "If that line-drawing proves to be unmanageable, it is up to Congress, not jurists, to revise the statute. Congress did so with FELA, and we have no reason to believe it cannot do so here. . . ." *Id.* (citation and footnote reference omitted). Additionally, "[n]othing in *Circuit City* requires that we rely on the pro-arbitration purpose reflected in [9 U.S.C.] § 2 to even *further* limit the already narrow definition of the phrase 'engaged in commerce.'" *Id.* at 914 (emphasis in the original).

even "when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders." 596 U.S. at 457 n.2.[7] The Supreme Court declined to address situations beyond the facts involved in *Saxon*, and did not otherwise mandate that a worker must have hands-on involvement with the goods themselves to qualify as a transportation worker involved in interstate commerce. *See id.*

Menzies and Amicus also fault the district court for relying on non-FAA cases addressing FELA and the Fair Labor Standards Act (FLSA). However, in *Rittmann*, we relied on FELA cases, as well as Supreme Court cases discussing the Clayton and Robinson-Patman Acts, to resolve the FAA exemption issue. *See* 971 F.3d at 912-13 & n.2. In doing so, we emphasized that there has been a "longstanding reliance on [FELA] to interpret the FAA's text, dating back to the 1950s." *Id.* at 918 n.9 (citations omitted). The First Circuit, for example, referenced FELA to interpret the FAA's interstate commerce exemption, observing,

> In numerous cases, the Supreme Court considered when a railroad employee was engaged in interstate commerce, such that the FELA provided coverage for injuries sustained on the job. Whether a worker had

7. Notably, the Supreme Court cited, without criticizing, our decision in *Rittmann* as exemplifying "a class of workers" whose duties were "further removed from the channels of interstate commerce or the actual crossing of borders." *Saxon*, 596 U.S. at 457 n.2.

> moved across state lines was not dispositive. Rather, the Court concluded that workers engaged in interstate commerce did not refer only to those workers who themselves carried goods across state lines, but also included at least two other categories of people: (1) those who transported goods or passengers that were moving interstate, and (2) those who were not involved in transport themselves but were in positions so closely related to interstate transportation as to be practically a part of it.

Waithaka v. Amazon.com, Inc., 966 F.3d 10, 19-20 (1st Cir. 2020) (citations and internal quotation marks omitted). The First Circuit also noted that the Supreme Court has referenced the federal arson statute, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act in interpreting sections 1 and 2 of the FAA. *See id.* at 16-17.

Under the analytical framework used in Supreme Court cases and in our precedent interpreting similar statutes, there is historical support for the district court's determination that fuel technicians are transportation workers engaged in commerce. In *Wirtz*, for example, the Fifth Circuit held that, under the FLSA, "[t]here can be no question that the employees who hauled airplane fuel to the planes were engaged in commerce within the statute and the applicable judicial precedents." 365 F.2d at 460-61 (citation omitted). And in *Shanks v. Delaware, Lackwanna, & W. Railroad Co.*, 239 U.S. 556, 36 S. Ct. 188, 60 L. Ed. 436 (1916), the Supreme Court similarly

recognized that, under FELA, "the requisite employment in interstate commerce exists . . . where a fireman is walking ahead of and piloting through several switches a locomotive which is to be attached to an interstate train and to assist in moving the same up a grade." *Id.* at 558-59 (citation omitted); *see also North Carolina R.R. Co. v. Zachary*, 232 U.S. 248, 259-60, 34 S. Ct. 305, 58 L. Ed. 591 (1914) (holding that a fireman's "acts in inspecting, oiling, firing, and preparing his engine for [a] trip . . . were acts performed as a part of interstate commerce and the circumstance that the interstate freight cars had not as yet been coupled up [was] legally insignificant"). Although these cases are not dispositive in determining if fuel technicians are transportation workers engaged in commerce, their reasoning militates against Menzies's contentions that a transportation worker is limited to those employees who have hands-on contact with goods and direct involvement with the transportation of the goods.

Contrary to Menzies's argument, the district court faithfully applied *Saxon's* analytical framework, our precedent as set forth in *Rittmann*, and the guidance from cases involving similar statutory language. We agree with the district court that Lopez, as a transportation worker engaged in intestate or foreign commerce, was exempt from the arbitration requirements imposed by the FAA. *See Rittmann*, 971 F.3d at 919.

IV. CONCLUSION

In *Saxon*, the Supreme Court did not hold that only workers who had hands-on contact with goods bound for transportation in interstate or foreign commerce qualify for the FAA exemption for transportation workers. Instead, the Supreme Court opined that "the answer will not always be . . . plain 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. Applying *Saxon* and our precedent as set forth in *Rittmann*, we conclude that Lopez, working as a technician fueling airplanes carrying goods in interstate and foreign commerce, qualifies as a transportation worker for purposes of the exemption from the FAA's arbitration requirements.

AFFIRMED.

APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED DECEMBER 9, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

CV 21-7108-DMG (Ex)

DANNY LOPEZ,

v.

AIRCRAFT SERVICE INTERNATIONAL, INC., *et al.*

DOLLY M. GEE, UNITED STATES DISTRICT JUDGE.

December 9, 2022, Decided; December 9, 2022, Filed

Proceedings: IN CHAMBERS—ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION [29]

On July 21, 2021, Plaintiff Danny Lopez filed a Complaint in Los Angeles County Superior Court against Defendants Aircraft Service International, Inc. and Menzies Aviation (USA), Inc., asserting a single claim under California's Private Attorneys General Act ("PAGA") for wage and hour violations. Compl. [Doc. # 1-2.][1] On September 2, 2021, Defendants removed the

1. Plaintiff also named "Air Menzies International (USA), Inc." as a defendant. Defendants maintain that this entity does

action to this Court, invoking federal question jurisdiction on the basis that portions of Lopez's claim are completely preempted by the Railway Labor Act, 45 U.S.C. § 151 *et seq. See* Notice of Removal ¶¶ 5-25.

On April 7, 2022, the Court denied Defendants' motion to stay this action pending the decision of the United States Supreme Court in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 213 L. Ed. 2d 179 (2022), because Defendants had not shown that the *Moriana* decision would have any impact on this case. [Doc. # 28.] The *Moriana* ruling issued on June 15, 2022. Defendants now move to compel arbitration of Lopez's claims. [Doc. # 29.] The motion to compel ("MTC") is fully briefed. [Doc. ## 34 ("Opp."), 36 ("Reply").] Having carefully considered the parties' written arguments, the Court **DENIES** the MTC.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Lopez worked for Menzies as a field technician in the fueling department at Los Angeles International Airport ("LAX") from approximately December 2007 to April 2021. Lopez Decl. ¶ 3 [Doc. # 34-1]; *see also* Bazerkanian Decl. ¶ 4 [Doc. # 29-2]. His job included physically adding fuel to passenger and cargo airplanes involved in both foreign and domestic interstate travel. Lopez Decl. ¶ 3.

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not exist. Plaintiff does not appear to contest this, so for purposes of this motion, the Court disregards this defendant.

Appendix B

Menzies has an Alternative Dispute Resolution ("ADR") Policy that covers "all disputes arising" between signing employees and Menzies, and refers such disputes to binding arbitration. Bazerkanian Decl., Ex. A [Doc. # 29-2]. The ADR Policy also prohibits employees "from joining or participating in a class action or as a collective action representative, or otherwise consolidating a covered claim with the claims of others." *Id.* at 6. Menzies contends that Lopez consented to the ADR Policy on June 28, 2019. Bazerkanian Decl. ¶ 4.

II.
LEGAL STANDARD

The Federal Arbitration Act ("FAA") provides that written arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 336, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011). "The basic role for courts under the FAA is to determine '(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Kilgore v. KeyBank Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (*en banc*) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)).

Federal substantive law governs questions concerning the interpretation and enforceability of arbitration agreements. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22-24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). Courts apply ordinary state law contract

principles, however, "[w]hen deciding whether the parties agreed to arbitrate a certain matter." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). If an arbitration clause is not itself invalid under "generally applicable contract defenses, such as fraud, duress, or unconscionability," it must be enforced according to its terms. *Concepcion*, 563 U.S. at 339. In adjudicating whether parties have agreed to arbitrate, "district courts rely on the summary judgment standard of Rule 56 of the Federal Rules of Civil Procedure." *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670 (9th Cir. 2021).

III.
DISCUSSION

Defendants seek to compel arbitration of Lopez's PAGA claim. Lopez argues the motion should be denied because Lopez is exempt from the FAA pursuant to another recent Supreme Court decision, *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 1783, 213 L. Ed. 2d 27 (2022).[2]

A. Exemption Pursuant to *Saxon*

Lopez contends that, because he works in the fueling department of Menzies at LAX and routinely adds fuel to airplanes in interstate commerce, he is engaged in interstate commerce and thus is exempt from the FAA's requirements.

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2. Lopez also raises a number of other arguments. Because the Court concludes that the FAA does not apply under *Saxon*, the Court need not address these other arguments.

Appendix B

Section 1 of the FAA exempts "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from the Act's requirements. 9 U.S.C. § 1. In *Saxon*, the United States Supreme Court concluded that an airline employee who frequently loaded and unloaded cargo on airplanes was engaged in interstate commerce, and thus was exempt from the FAA. 142 S. Ct. at 1793. The Court declined to create a blanket rule that all airline employees were engaged in interstate commerce. *See* 142 S. Ct. at 1791. Still, the Court refused to limit the exemption to only those airline transportation workers who actually "ride aboard an airplane in interstate or foreign transit." *Id.* Instead, the Court held that the exception applies to "any class of workers directly involved in transporting goods across state or international borders." *Id.* at 1789. The Court focused its attention on the actual work performed by the employee in question. *Id.* at 1788.

Defendants do not contest Lopez's description of his work, or offer additional evidence about the nature of that work. Instead, they contend that Section 1 does not cover Lopez's work because Lopez does not handle *goods* in commerce. As the Court recognized in *Saxon*, the question of whether an employee works in interstate commerce may be difficult to answer "when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing of borders." 142 S. Ct. at 1789 n.2 (citing *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 1374, 209 L. Ed. 2d 121 (2021)). For example, the Ninth Circuit has held that "last leg" delivery drivers fell within Section 1

and were therefore exempt from the FAA, even though these drivers undisputedly did not actually move goods between states. *See Rittmann*, 971 F.3d at 916. On the other hand, another court in this District, applying *Saxon*, has concluded that a truck mechanic was not exempt from the FAA because, even though his employer was "directly engaged in interstate commerce," the mechanic himself was only "perceptibly connected to the instrumentalities of commerce." *Holley-Gallegly v. Ta Operating LLC*, No. ED CV 22-593-JGB (SHKx), 2022 U.S. Dist. LEXIS 192765, 2022 WL 9959778, at *2-3 (C.D. Cal. Sept. 16, 2022) (quoting *Saxon*, 142 S. Ct. at 1791).

Although an employee who adds fuel to cargo planes is not literally moving goods (as the plaintiffs in *Saxon* and *Rittmann* did), he is closer both physically and temporally to the actual movement of goods between states than a truck mechanic who works on trucks that move goods in interstate commerce (as was the case in *Holley-Gallegly*). The Fifth Circuit has held "there can be no question" that employees who hauled fuel to planes that transported goods in interstate commerce were "engaged in commerce" for purposes of the Fair Labor Standards Act because their activities were "so closely related to [. . .] commerce as to be in practice and in legal contemplation a part of it." *See Wirtz v. B. B. Saxon Co.*, 365 F.2d 457, 461 (5th Cir. 1966). By contrast, the court held that employees who provided janitorial services in buildings that housed instrumentalities of commerce were not engaged in commerce. *Id.* at 462.

Applying similar logic as *Wirtz*, this Court concludes that the act of fueling cargo planes that carry goods in interstate commerce is "so closely related to interstate transportation as to be practically a part of it." *See Saxon*, 142 S. Ct. at 1789. Lopez, whose duties included physically adding fuel to planes, was directly involved in the transportation itself, not only the maintenance of the means by which goods were transported. The Court therefore concludes that Lopez is exempt from the requirements of the FAA pursuant to section 1.

IV.
CONCLUSION

In light of the foregoing, the Court **DENIES** Defendants' MTC.

IT IS SO ORDERED.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 29, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55015
D.C. No. 2:21-cv-07108-DMG-E
Central District of California, Los Angeles

DANNY LOPEZ, INDIVIDUALLY, AND ON BEHALF OF ALL OTHER AGGRIEVED EMPLOYEES,

Plaintiff-Appellee,

v.

AIRCRAFT SERVICE INTERNATIONAL, INC., A CORPORATION; MENZIES AVIATION (USA), INC., A CORPORATION,

Defendants-Appellants.

Filed August 29, 2024

ORDER

Before: RAWLINSON, MELLOY,* and H.A. THOMAS, Circuit Judges.

* The Honorable Michael J. Melloy, United States Circuit Judge for the U.S. Court of Appeals for the Eighth Circuit, sitting by designation.

Judges Rawlinson and Thomas voted to deny, and Judge Melloy recommended denying, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

The Petition for Rehearing En Banc, filed August 1, 2024, is DENIED.