No. 24-596

IN THE

Supreme Court of the United States

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

Petitioners,

v.

DANNY LOPEZ,

Respondent.

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

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

ARGUMENT

I. Relevant Procedural Background

Pending before the Court is the Petition for Writ of Certiorari (the "Petition") filed on November 26, 2024, by Aircraft Service International, Inc. and Menzies Aviation (USA), Inc. (hereinafter collectively "Menzies" or "Petitioners") following the Ninth Circuit's opinion in *Lopez v. Aircraft Serv. Int'l, Inc.*, 107 F.4th 1096 (9th Cir. 2024). On December 24, 2024, the Petition was distributed for Conference scheduled to occur on January 10, 2025. Pursuant to Supreme Court Rule 15.8, Menzies hereby submits this Supplemental Brief in Support of Petition for Writ of Certiorari to alert the Court to recent developments in *Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR (C.D. Cal.) and *Joyner et al. v. Frontier Airlines, Inc. et al.*, No. 24-CV-01672-SKC-KAS (D. Colo.) that reiterate the importance of the issues presented by the Petition and the need for this Court to correct the erroneous analysis and outcome of *Lopez*.

In Section III of its "Reasons For Granting The Petition" of the Petition, Menzies alerted the Court's attention to the *Amaya* case pending in the Central District of California, where the currently certified class includes all of Menzies' non-exempt California employees without regard to job duties or job classification. (*Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, ECF No. 101, at 10–11). Menzies noted in Footnote 4 of the Petition that the *Amaya* District Court would soon be asked to rule on a complex and burdensome motion to compel arbitration because the plaintiffs are

resisting arbitration with respect to every member of the class – including administrative assistants, recruiters and other office personnel. When Menzies filed the Petition on November 26, 2024, it was still in the process of assembling the voluminous evidentiary material in support of the motion to compel arbitration, delaying the filing date.

Menzies filed the motion to compel arbitration on December 30, 2024 (*Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, ECF No. 101 (the "*Amaya* Motion")). Because of the position taken by the plaintiffs, the *Amaya* Motion will task the *Amaya* District Court with evaluating the applicability of the Federal Arbitration Act's ("FAA") Section 1 "Transportation Worker" exemption, on a classification-by-classification basis, to over five dozen separate job classifications, many of which plainly have no direct involvement in the movement of interstate goods. Needing to arm the *Amaya* District Court with the necessary evidence to perform this significant undertaking, Menzies supported the *Amaya* Motion with an Appendix of Evidence totaling 477 pages comprised of job descriptions, witness deposition testimony, and witness declaration testimony.

In Section III of its "Reasons For Granting The Petition," Menzies also alerted the Court to the *Joyner* case, where the District of Colorado has before it a fully briefed motion seeking to compel arbitration of claims brought by a class of Customer Service Agents who virtually never directly handle passenger baggage (the "*Joyner* Motion"). On December 30, 2024, the *Joyner* District Court set the *Joyner* Motion for a full-day hearing to occur on February 21, 2025 (*Joyner et al. v. Frontier*

Airlines, Inc. et al., No. 24-CV-01672-SKC-KAS, ECF No. 61). Menzies presumes the *Joyner* District Court intends to devote that hearing to contested factual issues in recognition of the need to sort through evidentiary questions based on the opposition strategy plaintiffs have employed in opposition to the *Joyner* Motion.

II. The *Amaya* And *Joyner* Motions Indicate That Lower Courts Are Likely To Continue Having To Conduct "Mini-Trials" If This Court Allows *Lopez* To Stand

Last term, in *Bissonnette v. LePage Bakeries Parks St., LLC*, 601 U.S. 246 (2024), this Court reiterated that because the FAA's "Transportation Worker" exemption demands narrow construction, analysis of how it applies to any particular class of workers should not require a district court to conduct "mini trials" necessitating time-consuming and burdensome discovery. *Id.* at 247. This is so because *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), establishes a simple, straightforward, and practical test for analyzing whether the exemption applies. Specifically, unless a class of workers has "direct" and "physical" involvement with the movement of interstate goods that is sufficiently "active" and "frequent," the narrow exemption does not apply. *Id.* at 455-58. The *Amaya* and *Joyner* Motions show how *Lopez*'s erroneous analysis and outcome are already forcing district courts to engage in prohibited mini-trials burdened by extensive evidentiary issues and discovery requirements.

The *Amaya* Motion asks the *Amaya* District Court to consider whether any of 64 Menzies job classifications in California qualify as "Transportation Workers" under the

FAA. Prior to filing the *Amaya* Motion, Menzies hoped to narrow its scope substantially to consider only the handful of worker classifications that might be considered a "close call" and stipulate that seemingly obvious classifications like desk workers and other office and administrative personnel are subject to arbitration. (*Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, ECF No. 101, at 12–14). Plaintiffs refused and stated in pre-filing meet and confer emails that they will pursue the same industry-wide argument this Court rejected in *Bissonnette* and resist the *Amaya* Motion with respect to every Menzies non-exempt job classification in California because no matter what any given employee does, his or her work has some impact on Menzies' larger ability to carry out its operations, and therefore qualifies as a transportation worker under *Lopez*. (*Id.* at 14).

Realistically, the *Amaya* Motion should have been limited to a handful of "close call" job classifications. But because the *Amaya* plaintiffs refused, in reliance on *Lopez*, Menzies' attempts to narrow the job classifications at issue in the *Amaya* Motion, it is much broader than it should have been, and Menzies was forced to develop extensive evidence with respect to every one of its non-exempt California positions. This delayed the filing of the *Amaya* Motion for several months to allow for multiple days of depositions, voluminous written discovery, and dozens of witness interviews culminating in eight signed witness declarations. (*See Amaya et al. v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, ECF No. 101-01). Presumably more such discovery is in store as the plaintiffs seek to resist the filed *Amaya* Motion.

What has transpired vis-à-vis the *Amaya* Motion is less the product of stubborn lawyering as it is the

product of *Lopez* and the confusing, unworkable "vital component" analysis it invented. Before *Lopez*, it would have been frivolous to argue that positions like talent acquisition specialists or human resources administrators working office and desk jobs trigger the "Transportation Worker" exemption merely because their work is "vital" to transportation since employers cannot conduct their business if they cannot provide administrative and "behind the scenes" support to positions actually responsible for moving interstate goods. The unfortunate scope of the *Amaya* Motion instead demonstrates the need for this Court to once again show lower courts that they are misapplying this Court's precedents in ways that breed litigation, not simplify and reduce it. Similarly, though the *Joyner* Motion considers only one job classification at one airport – Menzies' Customer Service Agents at Denver International Airport – it also reiterates how plaintiffs are relying on *Lopez* to resist their arbitration obligations despite not having "direct" and "physical" involvement with the movement of interstate goods that is sufficiently "active" and "frequent" as required by *Saxon*. 596 U.S. at 455-58. The *Joyner* District Court has scheduled a full-day "mini trial" to take place on February 21, 2025, and the *Amaya* District Court will have dozens of job classifications to subject to such "mini-trials" in direct contravention of what this Court has instructed. *See Bissonnette*, 601 U.S. at 246 (directing that application of the transportation worker rule should not result in "mini trials" and asserting extensive discovery should not be necessary to ruling on a motion to compel arbitration).

If *Lopez* remains good law, plaintiffs are certain to continue resisting arbitration with respect to job classifications plainly beyond *Saxon*'s straightforward

and simple scope, breeding more of the litigation playing out right now in *Amaya* and *Joyner*. This Court has warned against creating "considerable complexity and uncertainty" likely to "breed litigation from a statute that seeks to avoid it." *Bissonnette*, 601 U.S. at 247. The recent procedural developments in *Amaya* and *Joyner* indicate the need to repeat this warning and reiterate the importance of this Court taking up this matter and correcting the mistakes of *Lopez*.

CONCLUSION

For the reasons set forth in the Petition and this Supplemental Brief, the Court should step in 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 and reverse.

Dated this January 6, 2025.

Respectfully submitted,

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