No. 24-935

In the Supreme Court of the United States

FLOWERS FOODS, INC., et al.,
Petitioners,

v.

ANGELO BROCK,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Are workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders—transportation workers "engaged in foreign or interstate commerce" for purposes of the Federal Arbitration Act's § 1 exemption?

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INTRODUCTION

This is the second time in two years that Flowers Foods has asked this Court to hold that commercial truck drivers are not transportation workers for purposes of the Federal Arbitration Act. The Court rejected its request last year. *See Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246 (2024). It should not entertain a new one.

The Federal Arbitration Act exempts the employment contracts of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. This Court has explained that the exemption applies to workers who are "engaged in commerce" in the same way as "seamen" and "railroad employees"—that is, workers who are "actively engaged" in the transportation of goods through the channels of interstate commerce. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458-59 (2022). Or, put simply, "transportation workers." *Id.*

Flowers, the multibillion-dollar conglomerate behind Wonder Bread, relies on thousands of truck drivers to get its products onto retail shelves across the country. These truckers are "last-mile drivers": When stores like Walmart or Costco order from Flowers, the company ships their goods to a regional warehouse in the retailer's state, where truck drivers like the plaintiff pick them up and deliver them to the store. The Tenth Circuit reached the unsurprising conclusion that these truck drivers are transportation workers, exempt from the Federal Arbitration Act.

Flowers asks this Court to grant certiorari to decide whether "workers who deliver locally goods that travel in interstate commerce" are "engaged in foreign or

interstate commerce." But that question sweeps in at least two different classes of workers. The first is last-mile drivers, workers who transport goods on the final leg of an interstate journey to their intended destination. That's the class of workers at issue in this case. The second is workers who transport goods ordered by local customers from local retail stores—restaurant-delivery workers are the quintessential example.

By lumping both classes of workers into the question presented, Flowers is asking this Court to resolve issues the case doesn't present—such as how the exemption applies to food-delivery drivers. And it is teeing up a threshold factual dispute about what class of workers Mr. Brock belongs to. Mr. Brock argues, and the Tenth Circuit agreed, that he is a last-mile driver who transports Flowers' goods to Flowers' customers. But Flowers seeks to portray him as an independent businessman, selling his wares to local retailers. To even determine what question is actually presented in this case, this Court would have to referee that highly factual, case-specific dispute. Flowers offers no reason that this Court should take a case where it's not even clear what question will be presented.

Flowers contends that there's a circuit split, but in fact, there is widespread consensus about how the worker exemption applies to each of these classes: Last-mile drivers are "engaged in … interstate commerce" and therefore exempt from the Federal Arbitration Act. Workers who deliver from local stores to local customers, like restaurant couriers, are not.

Flowers' eye-catching objection that the Tenth Circuit's understanding of the worker exemption is "limitless"—creating a "gaping hole" in the Federal Arbitration Act—crumbles once it becomes clear that the

very same circuits that have held that last-mile drivers *are* exempt have also held that rideshare and food-delivery drivers *are not*.

Those limits reflect the ordinary meaning of the Act's text as it was understood when enacted. As the lower courts have explained, it was well-and-truly settled in 1925 that those who "haul goods on the final intrastate legs of interstate journeys are transportation workers engaged in interstate commerce." Pet. App. 14a. But those who deliver goods bought by a local customer from a local retailer, independent of any interstate transaction, are not. That's why the lower courts agree that last-mile truck drivers are "engaged in interstate commerce"—and restaurant-delivery workers are not. There is no reason for this Court to take a case to reiterate a point that has been clear for more than a century.

STATEMENT

I. Statutory background

The Federal Arbitration Act requires courts to enforce arbitration clauses. 9 U.S.C. § 2. But that mandate has an exception: "[N]othing" in the Act "shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." *Id.* § 1. This Court has explained the scope of that exemption in a series of four cases over the last twenty years.[1]

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[1] For simplicity, this brief omits ellipses when shortening "engaged in foreign or interstate commerce" to "engaged in commerce" or "engaged in interstate commerce." Citations to "JA" are to the joint appendix filed in the Tenth Circuit, and citations to "Doc." are to the Tenth Circuit docket. In addition, unless otherwise specified, all internal quotation marks, alterations, and citations are omitted from quotations throughout.

1. The Court's first encounter with the worker exemption was more than two decades ago in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001). There, the Court held that the exemption does not apply to all workers; it applies only to the "contracts of employment of transportation workers." *Id.* at 119.

To reach this conclusion, the Court relied on the interpretive "maxim *ejusdem generis*": Where a statute lists specific words—like "seamen" and "railroad employees"—followed by a catch-all phrase—like "any other class of workers engaged in commerce"—the catch-all phrase should be interpreted to cover "objects similar in nature" to the specifically enumerated words that precede it. *Id.* at 114–15. The "linkage" between "seamen" and "railroad employees," the Court held, is that they are transportation workers. *Id.* at 114–15, 121. Therefore, the "other class[es] of workers" exempt from the statute must be transportation workers as well. *Id.*

This exemption, the Court explained, reflects "Congress's demonstrated concern with transportation workers and their necessary role in the free flow of goods." *Id.* at 121.

2. Next, in *New Prime, Inc. v. Oliveira*, the Court held that the exemption applies to both employees and independent contractors. 586 U.S 105, 121 (2019). In reaching that conclusion, the Court observed that some of the exemption's terms "swept more broadly at the time of the Act's passage than might seem obvious today." *Id.* at 119–20. Nevertheless, the Court emphasized that, like any statute, the exemption should be given the meaning that it had "at the time of the Act's adoption in 1925," not what it conjures up for "lawyerly ears today." *Id.* at 114.

The Court also rejected the argument that a "liberal federal policy favoring arbitration agreements" could justify reading the exemption more narrowly than its text would otherwise suggest. *Id.* at 120. If the Court were to "pave over" the limits of the Federal Arbitration Act "in the name of more expeditiously advancing a policy goal," it would "thwart rather than honor" congressional intent. *Id.* at 120–21. By giving the worker exemption the full scope its text requires, the judiciary "respect[s] the limits up to which Congress was prepared to go when adopting the Arbitration Act." *Id.*

3. Just a few years ago, in *Southwest Airlines Co. v. Saxon*, this Court again reiterated that the Act must be interpreted "according to its ordinary, contemporary, common meaning." 596 U.S. 450, 455 (2022). There, the Court held that an airline baggage handler, who loaded and unloaded cargo from airplanes, was a member of a "class of workers engaged in foreign or interstate commerce"—and therefore exempt from the Federal Arbitration Act. *Id.* at 453.

The Court rejected the argument that the exemption should be limited to workers who personally cross state lines, because that limitation has no basis in the statute's text. *See id.* at 461–63. Relying on case law contemporaneous with the passage of the statute, the Court concluded that when the Act was enacted, there was "no doubt that interstate transportation"—and therefore interstate commerce—encompassed loading goods at the start of an interstate journey and unloading them once they had reached their destination. *Id.* at 457–59 (quoting *Balt. & Ohio Sw. R.R. Co. v. Burtch*, 263 U.S. 540, 544 (1924) & *Erie R.R. Co. v. Shuart*, 250 U.S. 465, 468 (1919)). Workers who did so, therefore, were "engaged in

interstate commerce." *See id.* The Act's worker exemption, the Court held, must be interpreted in accordance with that "ordinary, contemporary" meaning. *See id.* at 455.

The Court again rejected the contention that the exemption should be narrowed to better serve a "proarbitration purpose[]." *Id.* at 463. "[W]e have no warrant," the Court explained, "to elevate vague invocations of statutory purpose over the words Congress chose." *Id.*

4. Finally, just last year, the Court once more declined to narrow the exemption in *Bissonnette v. LePage Bakeries Park Street, LLC*, 601 U.S. 246 (2024). That case involved the same workers as this one: truck drivers who work for Flowers Foods, transporting the goods that Flowers manufactures in one state on the final leg of their journey to retail locations in another. *Id.* at 249. The question in *Bissonnette* was "whether a transportation worker must work for a company in the transportation industry to be exempt" from the Federal Arbitration Act. *Id.* at 252. Again relying on the text of the statute, the Court held that there was no basis for an industry limitation. *See id.* at 253–56. The statute exempts transportation workers "engaged in interstate commerce," not workers in the transportation industry. And yet again, the Court refused an invitation to rely on policy over "text and precedent." *Id.* at 256.

II. Factual and procedural background

1. The plaintiff in this case, Angelo Brock, is a truck driver, who works full time hauling goods for Flowers Foods. Pet. App. 2a, 50a; JA 23. Flowers, the maker of Wonder Bread, manufactures packaged baked goods found on grocery shelves throughout the country. Pet.

App. 3a–4a; *Bissonnette*, 601 U.S. at 248–49.[2] Flowers ships its products across state lines from its manufacturing plants to stores like Walmart, Safeway, and Costco. Pet. App. 5a; *see* JA 7, 14, 131. Mr. Brock was responsible for the last leg of that journey—from Flowers' regional warehouse in Colorado to stores throughout the state. Pet. App. 5a.

Flowers relies on truck drivers like Mr. Brock to deliver its products to stores across the country. Pet. App. 4a–5a; JA 6–7. Externally, Flowers claims that its drivers are "independent distributors," who buy products from Flowers and then resell them to their own customers. *Id.*; JA 129–132. It requires its drivers to establish shell companies and sign convoluted contracts to give the appearance that they are independent businesspeople. *Id.*; *see* JA 51–93. But internally, the company admits that the drivers' "sole operating function" "is to deliver bread products for us [Flowers] to our customers." JA 263; *see also* Pet. App. 26a (describing Securities and Exchange Commission filing in which Flowers describes the retailers that buy its products as Flowers' customers, not the drivers').

Flowers contracts directly with retailers like Walmart, negotiating which products it will sell and at what price. JA 7, 14–15, 141; *see* Pet. App. 25a & n.8. Flowers then directs its truck drivers where to deliver its products and when. *Id.* In other words, Flowers' drivers are not independent resellers of Flowers' products; they are Flowers' employees that transport Flowers' goods to market. *Id.*

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[2] Flowers Foods is a conglomerate, and the defendants in this case are Flowers and related entities. This brief refers to them together as Flowers.

By claiming that its drivers are "independent distributors," Flowers avoids minimum-wage laws and employment taxes. JA 15. It also charges truck drivers for the privilege of driving for the company, deducts its own business expenses from its drivers' paychecks, and makes its drivers pay fees for the equipment Flowers requires them to use. JA 16, 19.

Mr. Brock sued Flowers, alleging that the drivers that it classifies as independent contractors are, in fact, Flowers employees. JA 23. Therefore, he alleged, Flowers is required to comply with minimum-wage and overtime laws, and it is not permitted to withdraw its business expenses from its drivers' paychecks. JA 23–24.

2. Flowers moved to compel arbitration based on an arbitration clause in the "Distributor Agreement" that Flowers requires its drivers to sign. Pet. App. 6a–7a. The company argued that although Mr. Brock is a truck driver who transports goods that Flowers manufactures in one state to its customers in another, he is not a transportation worker exempt from the Federal Arbitration Act. JA 33–34. Its lead argument was that Flowers is not a transportation company, and the worker exemption applies only to workers in the transportation industry. JA 34–37. The company also argued that Flowers drivers are not "engaged in interstate commerce" because they are "primarily business owners," who distribute goods without crossing state lines. JA 38–44.

The district court rejected both arguments. Presaging this Court's decision in *Bissonnette*, the court held that there is no basis for imposing an industry requirement that is found nowhere in the exemption's text. Pet. App. 42a–46a. It also held that Mr. Brock is a member of a class of workers "engaged in interstate commerce." Pet. App.

52a. Mr. Brock "belongs to a class of workers who haul goods on the final legs of interstate journeys." Pet. App. 50a. When Flowers' Colorado customers order its products, Flowers ships them from its manufacturing plants, across state lines, to a regional warehouse in Colorado, where Mr. Brock loads them onto his truck to complete the delivery. Pet. App. 50a. Workers like Mr. Brock who transport goods on the last leg of an interstate journey, the court held, are "actively engaged" in interstate commerce. Pet. App. 50a.

3. The Tenth Circuit affirmed. The court distinguished between two kinds of workers: "(a) last-mile delivery drivers," who are responsible for the last, typically intrastate leg of a shipment of goods from one state to another; and "(b) rideshare and food-delivery" drivers, who pick up people or food and drop them off in the same local area. Pet. App. 13a.

Surveying the decisions of other circuits, the court explained that the First and Ninth Circuits have concluded that last-mile drivers are exempt from the Federal Arbitration Act, but rideshare and food-delivery workers are not. Pet. App. 15a–18a. That's because in 1925, when the Act was passed, workers "who haul[ed] goods on the final intrastate legs of interstate journeys" were understood to be "engaged in interstate commerce." Pet. App. 14a–18a. But once a good had come to "permanent rest"—that is, once it reached its intended final destination—any local sale or transport that might later occur as part of a wholly separate, independent transaction constituted intrastate commerce. *Id.* So workers engaged in that independent, local transaction were not considered to be "engaged in interstate commerce." *Id.*

The Tenth Circuit joined the First and Ninth Circuits in adopting this distinction, which reflects the ordinary meaning of the words "engaged in interstate commerce" when the Federal Arbitration Act was passed. Pet. App. 18a. But it could not end there. Because Flowers had obfuscated the work its drivers actually perform, the court had to examine the record to determine whether Mr. Brock was an independent, local businessman making wholly local sales as Flowers claimed, or whether, in fact, his job was to transport goods ordered from Flowers' out-of-state manufacturing plants on the last leg of their journey to the Flowers customers that ordered them. Pet. App. 22a–27a.

The court concluded that the record shows the latter. *Id.* Mr. Brock "serves as the last-mile driver for Flowers." Pet. App. 26a. His "intrastate delivery route forms the last leg of the products' continuous interstate" journey from Flowers' manufacturing plants to their final destination, Flowers' retail-store customers. *Id.* "Flowers products do not come to rest" at the regional Colorado warehouse; rather, that warehouse stop is "simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys." Pet. App. 26a–27a. Because Mr. Brock's job is to transport goods on the last leg of their interstate journey, the court held, he is a member of a class of workers that is "engaged in interstate commerce" and therefore exempt from the Federal Arbitration Act. Pet. App. 29a.[3]

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[3] The court declined to consider Flowers' argument, raised for the first time on appeal, that Mr. Brock's contract is not a "contract of employment" within the meaning of the worker exemption. Pet. App. 29a–30a.

The Tenth Circuit declined to rehear the case en banc, with no member of the court voting to grant Flowers' petition. Pet. App. 36a.

REASONS FOR DENYING THE PETITION

I. There is no circuit split.

Flowers claims that the circuits are split on whether the Federal Arbitration Act exempts "workers who deliver locally goods that travel in interstate commerce." Pet. i, 13–14. But the circuits do not actually disagree. Rather, Flowers has lumped together separate classes of workers into a single question presented and claimed that because the lower courts treat these different classes differently, the circuits must be split.

In fact, there is widespread consensus: Last-mile truckers like Mr. Brock, who transport goods ordered from out of state on the final leg of their journey, are exempt; workers who transport goods ordered from local retailers, like restaurant-delivery workers, are not. In drawing this distinction, the Tenth Circuit joined the First and Ninth Circuits, which had already come to the same conclusion. Pet. App. 18a; *Immediato v. Postmates, Inc.*, 54 F.4th 67, 77 (1st Cir. 2022); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 910–18 (9th Cir. 2020); *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020). And since the Tenth Circuit's decision, the Second and Third Circuits have adopted the same view. *See Bissonnette v. LePage Bakeries Park St., LLC*, 123 F.4th 103, 106–107 (2nd Cir. 2024) (citing *Brock v. Flowers Foods, Inc.*, 121 F.4th 753, 762, 764 (10th Cir. 2024)); *Adler v. Gruma Corp.*, 135 F.4th 55, 67–68 (3d Cir. 2025) (citing *Brock*, 121 F.4th at 761, 768).

The lower courts have reached this conclusion by examining the ordinary meaning of the exemption's text at the time the Federal Arbitration Act was passed. *See, e.g.*, *Waithaka*, 966 F.3d at 26; *Rittmann*, 971 F.3d at 910–18. By 1925, this Court had "consistently … held that a worker transporting goods that had come from out of state or that were destined for out-of-state locations was 'engaged in interstate commerce,' even if the worker's role in transporting the goods occurred entirely within a single state." *Waithaka*, 966 F.3d at 20. Thus, for example, a railroad employee transporting coal from a coal mine to a railroad storage yard two miles away "was engaged in interstate commerce" because that local transportation was the first leg of the coal's journey to another state. *See id.* (discussing *Phila. & Reading Ry. Co. v. Hancock*, 253 U.S. 284 (1920)). Last-mile truck drivers are "engaged in interstate commerce" in precisely the same way: Their intrastate transportation is simply one leg of an interstate journey. *See id.*

In contrast, the work of restaurant-delivery workers—and others who deliver goods ordered from local retailers—is not "a constituent part of the interstate movement of goods." *Adler*, 135 F.4th at 67. It's an "independent," purely local transaction. *Immediato*, 54 F.4th at 76–77. Those workers, therefore, are not "engaged in interstate commerce" and thus not exempt. *Id.* (discussing early twentieth century cases); *see Rittmann*, 971 F.3d at 917.

Flowers argues (at 15–16) that the Fifth Circuit broke with this consensus in *Lopez v. Cintas Corp.*, 47 F.4th 428 (5th Cir. 2022). But although the plaintiff there called himself a last-mile driver, he "did not predominantly drive a truck to deliver items." *Lopez v. Cintas Corp.*, 2021 WL

230335, at *1 (S.D. Tex. 2021). He primarily "met with customers, restocked supplies, and renegotiated agreements." *Id.*; *see Lopez*, 47 F.4th at 432 (job had an "emphasis on sales and customer service"). And while the supplies that the plaintiff sometimes delivered came from out of state at some point, there is no indication that their local delivery was a constituent part of any interstate journey. *See Lopez*, 47 F.4th at 432 (stating only that the plaintiff "picks up items from a local warehouse and delivers those items to local customers"). In fact, the defendant in *Lopez* explained that the court need not split with the First and Ninth Circuits to conclude that the plaintiff was not exempt. *See* Response Br. *Lopez v. Cintas*, 2021 WL 3164017, at *17 (5th Cir. July 23, 2021).

There is no reason to believe that faced with the facts here—an actual last-mile driver, responsible for completing the delivery of goods sent from one state to another—the Fifth Circuit would not conclude that last-mile driver is exempt. Indeed, in interpreting the Motor Carrier Act, the Fifth Circuit recently held that Flowers drivers *are* "engaged in interstate commerce." *Ash v. Flowers Foods, Inc.*, 2024 WL 1329970, at *2 (5th Cir. 2024). When retailers order products from Flowers, the court explained, those products are on a "continuous" interstate journey from the plant where they are manufactured to the retail store that ordered them. *Id.* at *3. The "continuity" of that interstate transportation "is not broken" when the goods are transferred to Flowers' last-mile drivers at a regional warehouse. *Id.* Rather, that transfer "facilitate[s]" the interstate transportation of the goods to "their destination." *Id.*

There's every reason to think that faced with the same question under the Federal Arbitration Act, the court would come to the same conclusion.[4]

In a last-ditch effort to manufacture a split, Flowers cites (at 14–15) the Eleventh Circuit's decision in *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337 (11th Cir. 2021). But *Hamrick* has been abrogated by this Court's subsequent decisions—twice. *Hamrick* held that the worker exemption applies only to classes of workers that are (1) "employed in the transportation industry" and (2) "travel from state-to-state, or country-to-country." *Id.* at 1349, 1351. Since then, this Court has explicitly rejected both requirements. *See Bissonnette*, 601 U.S. at 256 ("A transportation worker need not work in the transportation industry to fall within the exemption."); *Saxon*, 596 U.S. at 461–62 (exemption is not limited to those who "accompany freight across state or international boundaries").

Flowers protests (at 14–15) that the Court "expressed no opinion on" last-mile drivers specifically, "so *Hamrick* remains controlling." But the Eleventh Circuit "faithful[ly] appli[es]" this Court's precedents, including when they require abrogation of circuit precedent. *Vasconcelo v. Mia. Auto Max, Inc.*, 981 F.3d 934, 940 (11th Cir. 2020). It cannot, therefore, simply continue to follow *Hamrick*. And it has not yet had a chance to revisit the worker exemption's application to last-mile drivers. If,

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[4] Flowers makes hay of the Fifth Circuit's statement that the circuits are divided, but that statement is based on a mistake: The court believed that *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020), held that last-mile drivers are not exempt from the Federal Arbitration Act. *Lopez*, 47 F.4th at 432. But *Wallace* was about food-delivery drivers, not last-mile drivers. 970 F.3d at 802.

for some reason, the Eleventh Circuit decides to split with the other circuits' careful analysis, this Court can grant certiorari then.

This is not the first time a company that employs last-mile drivers has come to this Court, hoping that it will overrule the lower court consensus—and the plain text of the Federal Arbitration Act. This Court has rejected that gambit before, and it should do so again here. *See Amazon.com, Inc. v. Rittmann*, 141 S. Ct. 1374 (2021); *Amazon.com, Inc. v. Waithaka*, 141 S. Ct. 2794 (2021); *Domino's Pizza, LLC v. Carmona*, 144 S. Ct. 1391 (2024); *Amazon.com v. Miller*, 144 S. Ct. 1402 (2024).[5]

II. This case is a poor vehicle for deciding whether last-mile drivers, or any other class of workers, are exempt from the Federal Arbitration Act.

Flowers asks this Court (at i) to decide whether "workers who deliver locally goods that travel in interstate commerce" are exempt from the Federal Arbitration Act. But that question encompasses at least two distinct questions: (1) Are last-mile truck drivers—workers who deliver goods on the last leg of an interstate journey—exempt? And (2) are workers who deliver goods from local retailers to local customers, like restaurant-delivery workers, exempt? This case presents, at most, only one of those questions. But the parties dispute which.

According to Mr. Brock (and the Tenth Circuit), he is a last-mile truck driver. According to Flowers, he is a "local franchise business" owner. Doc. 18 at 29. This factual dispute matters. Last-mile drivers have always been understood to be "engaged in interstate commerce."

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[5] Two of these petitions were denied after the Fifth Circuit's decision in *Lopez* and the Eleventh Circuit's decision in *Hamrick*.

See infra 17–18. Local franchise business owners have not. *See Immediato v. Postmates, Inc.*, 54 F.4th 67, 75–78 (1st Cir. 2022).

In an effort to avoid this obvious vehicle problem, Flowers claims (at 28) that "there is no dispute about Brock's responsibilities or the class of workers to which he belongs." But that's simply incorrect. Throughout this litigation, Flowers has argued that "this is not a last mile case." Doc. 34 at 13. Flowers insists that Mr. Brock operates an independent business, purchasing Flowers products and reselling them locally to his own customers. Doc. 18 at 15, 23–24, 28–29; Pet. 9–10.

Mr. Brock disagrees. Mr. Brock alleges that Flowers' "independent distributors" are really last-mile truck drivers employed to deliver Flowers' products to Flowers' customers. Doc. 29 at 24; JA 5–19, 22–24. The Tenth Circuit agreed with Mr. Brock. Pet. App. 28a. But that hasn't stopped Flowers from sticking with its version of the facts in the petition. *See* Pet. 9–10.

Thus, to even determine what question this case presents, this Court would have to wade into a case-specific, factual dispute about what Mr. Brock actually does. If this Court would like to take a case about last-mile truck drivers—or food-delivery couriers or franchise business owners or any other class of workers—it should at least wait for one where the party seeking review agrees that the question is actually presented.

III. The lower-court consensus is correct.

1. The Tenth Circuit's decision, and the growing consensus that it joined, follow directly from the "ordinary meaning" of the text of the Federal Arbitration Act "at the

time Congress enacted the statute" in 1925. *New Prime*, 586 U.S. at 113.

The Act exempts "seamen, railroad employees, and any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. By 1925, it was well established that workers like Flowers truck drivers—those who transport goods on an intrastate leg of an interstate journey—are "engaged in interstate commerce." *See, e.g.*, *Rearick v. Pennsylvania*, 203 U.S. 507, 512–13 (1906); *Hancock*, 253 U.S. at 285; *Seaboard Air Line Ry. v. Moore*, 228 U.S. 433, 435 (1913).

Scores of this Court's cases made clear that when a customer orders goods from out of state, the transportation of those goods "in interstate commerce" does not end when the goods cross state lines or reach a warehouse in the customer's state or change delivery vehicles; interstate commerce ends when the goods reach the customer. *See, e.g.*, *Binderup v. Pathe Exchange Inc.*, 263 U.S. 291, 309 (1923); *Delk v. St. Louis & S.F. R.R. Co.*, 220 U.S. 580, 584–85 (1911); *Rhodes v. Iowa*, 170 U.S. 412, 414 (1898).

It was equally clear that workers who transport those goods along the way are "engaged in interstate commerce"—even if they're responsible only for an intrastate leg of the journey. In *Rearick*, for example, this Court held that a worker employed by an Ohio broom-seller to pick up brooms it had shipped to Pennsylvania and deliver them to its Pennsylvania customers was "engaged in interstate commerce." 203 U.S. at 512–13.

And in *Hancock*, this Court held that a railroad worker whose "duties … never took him out of Pennsylvania" was nevertheless "employed in commerce between states" because the goods he transported within Pennsylvania

were ultimately destined for another state. 253 U.S. at 285; *see also, e.g.*, *Seaboard Air Line*, 228 U.S. at 435 (railroad employee on a switch engine that never left the railyard was "engaged in interstate commerce" because the goods being hauled were ultimately destined for another state).

So when the Federal Arbitration Act was passed, Congress was well aware that by exempting workers "engaged in interstate commerce," it was exempting last-mile transportation workers. *See Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 648 (2010) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent.").

This contemporaneous meaning of the phrase "engaged in interstate commerce" is further supported by statutory context. Seamen and railroad employees—the two categories of workers that are enumerated in the exemption—have long included workers responsible for an intrastate leg of an interstate journey. *See, e.g.*, *Pac. Mail S.S. Co. v. Joliffe*, 69 U.S. 450, 456 (1864) (describing pilots—those who navigated ships into and out of difficult ports—as "seamen"); *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 344 (1991) (same, collecting cases from before 1920); *Hancock*, 253 U.S. at 285 (railroad employee responsible for intrastate leg of interstate journey).

Last-mile truck drivers are no different than the last-mile seamen and railroad employees of the early twentieth century. They transport goods on an intrastate leg of an interstate journey. They are, therefore, "engaged in interstate commerce" and thus exempt from the Federal Arbitration Act.

2. Flowers does not examine the ordinary meaning of the statute's text in 1925. Nor does it dispute that when

the Act was passed, last-mile transportation workers were understood to be "engaged in interstate commerce." The company's sole feint at a textual argument is to assert (at 26) that an "inquiry into the good's journey … has no basis in [the exemption's] text." The worker exemption, Flowers argues, requires a court to inquire only into the "actual work that the members of the class typically carry out," not the goods they transport. Pet. 26.

That makes no sense. The exemption hinges on whether the "actual work" that class members perform means that they are "engaged in interstate commerce." 9 U.S.C. § 1; *see Saxon*, 596 U.S. at 456. When that work is transporting goods, there's no way to answer that question without determining whether the goods themselves are "in interstate commerce." That's what it means to be "engaged in interstate commerce": to transport goods that are on a continuous journey from one state to a final destination in another. *See supra* 16–18. Adopting Flowers' ignore-the-goods approach would render the words "interstate commerce" unintelligible.

Lacking any support in the statute's text or history, Flowers appeals to policy. But vague invocations of unwritten policy preferences cannot overcome statutory text. *See, e.g.*, *Saxon*, 596 U.S. at 463; *New Prime*, 586 U.S at 120–21. And in any event, Flowers' policy concerns are overblown. Flowers complains (at 27) that exempting last-mile truck drivers from the Federal Arbitration Act could lead to "protracted threshold litigation" about who counts—invoking the decision below as an example. But there was no protracted litigation here: Flowers filed a motion to compel arbitration not long after the complaint was served, and it was decided on the papers shortly thereafter. *See* JA 3–4. Flowers chides the Tenth Circuit

for its detailed analysis of the company's relationship with its workers, but that was only necessary because Flowers' employment scheme is designed to conceal what its truck drivers actually do.

Finally, Flowers worries (at 25) that construing the exemption to reach last-mile truck drivers will somehow sweep in everyone from "pet shop employees" to "grocery store clerks." Not so. The reason the exemption reaches last-mile truck drivers is because they transport goods that are "in interstate commerce"—that is, goods that are being shipped from one state to another. Pet shop workers and grocery clerks don't transport anything. The same is true of airline web designers and schedulers. *Contra* Pet. 27. Construing the exemption in accordance with its ordinary meaning to reach last-mile truck drivers does not render it "limitless." *Contra* Pet. 22. It merely gives effect to the limits Congress imposed, rather than those that Flowers prefers.

CONCLUSION

This Court should deny the petition for certiorari.

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