No. 21-1572

In the

Supreme Court of the United States

DOMINO'S PIZZA, LLC,

Petitioner,

v.

EDMOND CARMONA, ABRAHAM MENDOZA AND ROGER NOGUERIA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

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

BRIEF IN OPPOSITION

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INTRODUCTION

Escaping the harsh winter, a farmer carefully packs a box of mushrooms from his farm in Canada. He's harvested all year and the produce is ready to go to its pre-determined destination – California. The mushrooms were ordered, processed, and delivered using Domino's own employees, three of whom were big-rig truck drivers who filed a class action lawsuit for unpaid wages, failure to reimburse expenses, and a multitude of labor code violations. Domino's moved to compel arbitration.

The Ninth Circuit, like the First, Third, Seventh and Eleventh Circuits, held that Section 1 of the FAA exempts transportation workers who are engaged in the movement of goods in interstate commerce, even if they do not cross state lines themselves. The panel's decision – for these three truck drivers -- forges no new ground, creates no inter-circuit conflict and properly applies the three decisions this Court has issued on the transportation exemption under the residual clause of the FAA.

In its plea for relief, Domino's simply ignores the out-of-state mushrooms, vegetables and cheese that its drivers transport to its California stores; these drivers spend years learning their craft and form the backbone of America's economy. Without them, there is no interstate commerce. It's high time for the gamesmanship to end and let these long-suffering truck drivers have their day in court.

COUNTER-STATEMENT OF FACTS

Domino's drivers transport supplies and product "within the flow of interstate commerce" by picking

them up from Domino's Southern California Supply Chain Center -- which obtains ***out-of-state*** supplies like vegetables from "a plant in Illinois," and mushrooms that are "brought in -- from Canada." Declaration of Aashish Y. Desai ("Desai Decl.") Dkt. No. 15-3 at ¶ 4; District Court Order (holding that the record "reflects that some of the goods come in from out of state"). Pet. App. 18a.

REASONS FOR DENYING THE WRIT

A. There is no Circuit Split Regarding the Application of the Residual Clause to Big-Rig Truck Drivers

This Court has addressed and clarified the FAA's transportation worker exemption three times. First, in *Circuit City Stores, Inc. v. Adams*, the Court concluded that the residual clause covers only transportation workers and not workers generally. 532 U.S. 105, 119 (2001). In the second decision, the Court ruled that the residual clause applies to truck drivers who are classified as independent contractors and not employees. *New Prime, Inc. v. Oliveria*, 138 S. Ct. 532, 539 (2019). Finally, the Court held that ramp agents cannot be compelled into arbitration – utilizing the residual clause of the FAA. *Southwest Airlines v. Saxon*, 596 U.S. ___ (2022) (June 6, 2022).

In rejecting the argument that workers have to physically be border-crossing, Justice Thomas followed the two-part test in *Saxon*. First, he determined if ramp agents who load and unload planes are a "class of workers" that are transportation workers. For that, he focused on the employee's duties, not the employer's business. Second, the Court determined whether the ramp agents

were "engaged in interstate commerce" – they were. The Ninth Circuit did the same here.

Domino's attempts to manufacture a circuit split by ignoring an important point: Mr. Carmona, and the other truck drivers he seeks to represent, transported over 200 different products from Domino's supply chain centers ***outside of California*** to their individual franchise stores ***in California*** – like vegetables from "a plant in Illinois" and mushrooms that were "brought in – from Canada." Pet. App. 18a; Desai Decl. Dkt. No. 15-3 at ¶ 4. Of course, one cannot "reapportion" mushrooms and vegetables. These items were simply packaged and shipped from Illinois and Canada to be used at Domino's franchise locations throughout California – classic "interstate commerce."

Domino's claims that the Seventh and Eleventh Circuits would have ruled differently here because the truck drivers "are making entirely intrastate deliveries." Not so. It is irrelevant whether or not the class of truck drivers themselves cross state or international borders while driving. Courts have consistently held that workers are "engaged in foreign or interstate commerce" if their *intra*state transportation of the cargo is one leg of an *inter*state or foreign journey for that cargo. *See Phila & Reading Ry. Co. v. Hancock,* 253 U.S. 284, 286 (1920) (railroad worker "engaged in" foreign or interstate commerce when transported coal within single state and coal destined for another state); *Bell v. H.F.. Cox, Inc.*, 209 Cal.App.4th 62, 77-78 (2012) (intrastate movement of goods is part of interstate commerce when it is one leg of interstate journey of those goods); *Circuit City*, 532 U.S. at 117 (section 1 applies to those whose work is part of the "flow of interstate commerce").

Domino's next argument that the Ninth Circuit should focus on the workers, not the goods they transport is also inaccurate. To start, one can consider both factors as the Ninth Circuit did; but the gravamen of the dispute is really an argument over part two of Justice Thomas's test from *Saxon*: what it means to be "engaged in interstate commerce" -- and that factually comes down to whether the truck drivers have to cross state lines to be engaged in "interstate commerce." They do not. Importantly, in 1925 neither Congress nor the average worker would have understood Section 1's language to require workers to cross state lines to be engaged in interstate commerce. Moreover, courts have consistently ruled that workers need not cross state lines to be engaged in interstate commerce. *See Singh v. Uber Techs*., Inc., 939 F3d. 219, 226 (3rd Cir. 2019) (holding that the residual clause applies to workers who operate a "single, unbroken stream of interstate commerce" that renders interstate commerce a "central part" of the job); *Waithaka v. Amazon.com*, 966 F.3d 10, 13 (1st Cir. 2020) (holding residual clause applies to workers who transport goods "within the flow" of interstate commerce, not simply those that cross state lines).

The Seventh Circuit decision in *Wallace v. Grubhub Holdings*, 970 F.3d 798, 802 (7th Cir. 2020) does not help Domino's because it is consistent with (not contrary to) the Ninth Circuit. The role of the Grubhub drivers in interstate commerce is *extremely attenuated* as they use personal cars or bicycles to deliver items that were ***converted*** from food products into meals – i.e., the products had completed their "interstate journey" at that point. 970 F.3d 573, 576. In fact, the *Wallace* court specifically said the residual clause covers workers

who can, like Mr. Carmona here, "demonstrate that the interstate movement of goods is a central part of the job." *Wallace*, 920 F.3d. at 801; *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (poultry no longer in stream of interstate commerce after being processed at slaughterhouses). Mr. Carmona's work was quintessential interstate transportation -- driving a big-rig 80,000 pound tractor-trailer owned by Domino's with international supplies (cheese from Colorado, mushrooms from Canada and vegetables from Illinois) to Domino's California stores. Without these truck drivers, interstate commerce would not exist.

The Eleventh Circuit, employing the same analysis as the First, Third and Ninth Circuits, admits that the central question is whether the drivers "in the main … actually engage in the transportation of goods in interstate commerce." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1346 (11th Cir. 2021). Here, they do. Mr. Carmona, as a big-rig truck driver, is precisely the type of worker Congress had in mind when it passed the FAA in 1925. That the mushrooms and vegetables Mr. Carmona delivered may have only constituted a small portion of the goods being delivered makes no difference where it is abundantly clear that these goods were within the flow of interstate commerce. *See, e.g., Siller v. L & F Distributors, Ltd.*, 109 F.3d 765, *2 (5th Cir. 1997) (noting that "even if the hauls contain only slight amounts of goods traveling in interstate commerce, they will be deemed interstate commerce in its entirety").

B. The Amicus' Policy Arguments Are Improper

The Chamber of Commerce resorts to policy arguments and hyperbole that the Ninth Circuit's ruling will "generate significant litigation," and even feigns concern for workers because employment disputes are "resolved up to twice as quickly in arbitration as in court." Amicus Brief, pg 4. The Chamber also notes that Domino's interpretation of Section 1 is more true to FAA's pro-arbitration purposes. But "[i]f courts felt free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal, we would risk failing to 'tak[e] … account of legislative compromises essential to the law's passage and, in that way, thwart rather than honor 'the effectuation of congressional intent.'" *New Prime*, 139 S.Ct. at 543.

The Ninth Circuit's decision is sound, true to both the structure and function of the FAA. Nowhere in the text of the FAA does it refer to "nonlocal" transportation or mention state or national boundaries. Domino's incredibly askes this Court to ignore the widely understood definition of "interstate commerce" – which has been consistently interpreted since 1925. *Cf. Baltimore & Ohio Southewestern R. Co. v. Burtch*, 263 U.S. 540, 544 (1924) (holding that it is "too plain to require discussion that the loading or unloading of an interstate shipment by the employees of a carrier is so closely related to interstate transportation as to be practically a part of it.").

C. The Decision Below is Correct

In *Carmona v. Domino's Pizza, LLC*, 21 F.4th 627 (9th Cir. 2021), the Ninth Circuit observed that "[t]he

critical **[not only]** factor in determining whether the residual clause exemption applies is not the nature of the item transported interstate commerce (person or good) or whether the plaintiffs themselves crossed state lines, but rather the nature of the business for which a class of workers performed their activities." *Id*. at 629. The truck drivers here, the court reasoned, were "engaged in a single, unbroken stream of interstate commerce that renders interstate commerce a central part of their job description," because they delivered out-of-state product to franchises within the state. *Id*. There is nothing illogical or unsound about this. Domino's can be more than a "pizza company" just as Tesla is more than a "car company." Here, Domino's hired big-rig truck drivers to transport over 200 out-of-state products into its California supply centers and eventually its own franchises, controlling every step of the process. That's interstate commerce – plain and simple.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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