No. 21-309

In The
Supreme Court of the United States

SOUTHWEST AIRLINES COMPANY,

Petitioner,

v.

LATRICE SAXON,
individually and on behalf of all similarly situated,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTRODUCTION AND STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Founded in 1985, the National Employment Lawyers Association ("NELA") is the largest bar association in the country focused on empowering workers' rights attorneys. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to protecting the rights of workers in employment, wage and hour, labor, and civil rights disputes. NELA attorneys litigate daily in every circuit, giving NELA a unique perspective on how principles announced by courts in employment cases actually play out on the ground. As such, NELA has a particular interest in ensuring that workers are correctly classified under the auspices of the Federal Arbitration Act and other relevant employment statutes.

SUMMARY OF THE ARGUMENT

An essential part of Latrice Saxon's job is picking up luggage and other goods and loading them onto a Southwest airplane. Without Ms. Saxon physically moving the cargo onto an airplane, the cargo would never travel through interstate commerce. The Federal Arbitration Act ("FAA") exempts from its coverage "contracts of employment of seamen, railroad

[1] All parties have consented to the filing of this brief by Email consent. No counsel for a party has authored this brief in whole or in part, and no person other than *amicus curiae*, its members, and its counsel have made monetary contributions to the preparation or submission of this brief.

employees, or *any other class of workers engaged in foreign or interstate commerce*." 9 U.S.C. § 1 (emphasis added). Workers in Ms. Saxon's class are included in the residual clause for three reasons. First, Ms. Saxon's class is included under the plain language of the residual clause. Second, recognizing that Ms. Saxon's class is exempt fulfills the legislative purpose of the FAA. Third, in holding that Ms. Saxon's class is included under the residual clause, the Seventh Circuit's analysis, which mirrored that of other circuits,[2] properly applied this Court's analysis from *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), and *New Prime Inc. v. Oliviera*, 139 S. Ct. 532 (2019).

The issue presented in this case is narrow. Ms. Saxon's job title is Ramp Supervisor, with responsibilities including loading and unloading cargo for interstate commerce. Workers in Ms. Saxon's class are not gate agents, nor are they analogous to Uber, Lyft, or Amazon delivery drivers. This case does not involve the broad issues implicated by a class of delivery drivers or any worker who does not physically load and unload cargo. Those cases are not before this Court, as they present distinct, unique factual situations to be determined at another time. Ms. Saxon is the first point of contact with the cargo, and her class physically places the cargo into the flow of commerce. Ms. Saxon's narrow class of workers is exempt from the FAA.

[2] *See infra* at 18-19 (discussing the circuit courts that address the residual clause).

ARGUMENT

I. The Plain Language of the Residual Clause in Section 1 of the Federal Arbitration Act Exempts Airline Cargo Loaders Who Load and Unload Goods for Transport in the Flow of Interstate Commerce.

Latrice Saxon is an airline cargo loader and a representative of a class of workers who load and unload goods that travel in the flow of interstate commerce. This class is necessarily exempt from the FAA under Section 1, which excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," because their positions are necessary for the flow of interstate air commerce. 9 U.S.C. § 1. Without Ms. Saxon's work, interstate air commerce would cease to function. Accordingly, Ms. Saxon's class is "engaged in foreign or interstate commerce."

In enacting Section 1, Congress expressly referenced two classes of professions that qualified for the Section's exemption: "seamen" and "railroad employees." 9 U.S.C. § 1. Congress not only referenced these professions, but also included the residual clause to exempt other comparable workers whose labor was a necessary part of interstate commerce. Southwest and its supporting *amici's* arguments ask the Court to write the residual clause out of the statute.[3] This Court has

[3] *See infra* at 16-18. Ms. Saxon's class is narrow and does not implicate workers outside of the direct loading and unloading of goods for travel in interstate commerce.

applied the maxim *ejusdem generis* to the specific examples in Section 1 to clarify the extent of the class contemplated in the residual clause. *See Circuit City*, 532 U.S. at 114-15. When applying *ejusdem generis*, the class of work exempted must be similar in nature to that performed by seamen and railroaders when the Act was passed. *See Circuit City*, 532 U.S. at 114-15.

The residual clause, however, cannot be defined by the commonality between railroads and shipping alone. Pursuant to the maxim *noscitur a sociis*, Section 1's exemption must be construed as a whole, considering the surrounding text and all of its terms. *See Lagos v. United States*, 138 S. Ct. 1684, 1688-89 (2018). Accordingly, the common attribute shared by railroaders and seamen must be interpreted in the context of their relationship with interstate commerce. *See* 9 U.S.C. § 1 (specifically exempting "seamen[] [and] railroad employees . . . engaged in . . . interstate commerce"). Under "commerce's" generally accepted meaning at the time, the common relationship binding the residual class of workers exempted is the necessity of their work for the movement of goods in interstate commerce.[4] *See*, *e.g.*, *Commerce*, *Black's Law Dictionary* (2d

[4] In contemporaneous disputes, this Court considered the key element of whether an individual was engaged in "commerce" was whether the *work* they performed "was so near to interstate commerce as to be a part of it." *Indus. Acc. Comm'n of State of Cal. v. Payne*, 259 U.S. 182, 185 (1922) (recognizing that a railcar repairman injured while working on train cars that were instruments of interstate commerce was himself engaged in interstate commerce); *see also Pederson v. Delaware, L. & W.R. Co.*, 229 U.S. 146, 150-52 (1913) (recognizing that an engineer repairing a railroad bridge was engaged in interstate commerce). *But see*

ed. 1910).[5] Airline workers in Ms. Saxon's class perform the necessary loading and unloading of goods for transit in interstate air commerce. This class of labor performs work identical to that performed by seamen and railroad employees at the time the Act was established. *See* 9 U.S.C. § 1; Brief of Respondent at 13-18, *Southwest Airlines Co. v. Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). Thus, applying this Court's principles of statutory construction as articulated in *Circuit City* and *New Prime*, Ms. Saxon's class is exempt under the residual clause of the FAA. *See Circuit City*, 532 U.S. at 114-15; *New Prime*, 139 S. Ct. at 539.

A. Section 1's reference to seamen, railroaders, and their relationship to interstate commerce exemplifies the type of work exempted from the FAA.

As this Court recognizes, "[i]t's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute." *New*

Delaware, L. & W.R. Co. v. Yurkonis, 238 U.S. 439, 444 (1915) (recognizing that a coal miner injured in the process of mining was not engaged in interstate commerce merely because "the coal might be or was intended to be used in the conduct of interstate commerce").

[5] As Southwest expressly acknowledges, at the time, "interstate commerce" was defined as a modification of the more general term "commerce," concerning such traffic "between . . . the several states of the Union." *Interstate Commerce*, *Black's Law Dictionary* (2d ed. 1910); *see* Brief for Petitioner at 6, *Saxon*, 142 S. Ct. 638 (No. 21-309).

Prime, 139 S. Ct. at 539 (internal quotation marks and citations omitted). Pursuant to this maxim, the class defined in the residual clause must be interpreted under the definition of its terms at the time the FAA was enacted. In the early 1900s, "class" as a legal term was understood as a form of organization, grouping people or things based on commonality.[6] Accordingly, Congress's use of "class" incorporated its ordinary meaning, intentionally organizing a group of workers based on shared attributes. Section 1's "class" then necessarily contemplates the shared attributes of seamen and railroaders as related to their active engagement in the flow of interstate commerce. Fortunately, this Court has already relied on *ejusdem generis* to determine the extent of the class exempted by the residual clause. *See Circuit City*, 532 U.S. at 114-15.

In *Circuit City*, this Court applied *ejusdem generis* to the residual clause to determine that the "clause 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." *Circuit*

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[6] *See Class*, *Black's Law Dictionary* (2d ed. 1910) ("[A] group of persons or things taken collectively, *having certain qualities in common*, and constituting a unit for certain purposes.") (emphasis added); *see also* John Bouvier, *Bouvier's Law Dictionary* (1934) ("A number of persons or things ranked together for some common purpose or as possessing some *attribute in common*.") (emphasis added). *Compare Class*, Bouvier, *Bouvier's Law Dictionary* (1934), *with Class*, William Edward Baldwin, *Bouvier's Law Dictionary, Student's Edition* (1928) (using the same definition three years after enactment of the FAA).

City, 532 U.S. at 115. At the time of enactment, "seamen" were defined as "persons . . . who are connected with the ship as such and in some capacity assist in its conduct." *Seamen*, *Black's Law Dictionary* (3d ed. 1933). Accordingly, "seamen" included not only members of the ship's crew who loaded and unloaded cargo, but also dockworkers who engaged in the same work. *See* Brief of Respondent at 16-17, 33-35, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309).[7]

Comparatively, "railroad employees," as used in Section 1, was a term lacking a precise definition, as Southwest acknowledges. *See* Brief for Petitioner at 6. Prior to the FAA, the statute governing labor disputes in the rail industry was the Transportation Act of 1920. *See* 41 Stat. 456. Under the Transportation Act, a railroad "employee" was anyone "engaged in the customary work directly contributory to the operation of railroads." Transportation Act of 1920, §§ 304, 307, 41 Stat. 456; *see New Prime*, 139 S. Ct. at 543, n.11 (citing *Railway Employees' Dept., A.F. of L. v. Indiana Harbor Belt R. Co.*, Decision No. 982, 3 R.L.B. 332, 337 (1922)). At the time Congress enacted the Transportation Act, railroad employees included everyone from the conductor and engineer, to the people in the baggage and parcel room, as well as those who loaded or unloaded

[7] Maritime cases both before and around the time the FAA was passed held that firemen and cooks were considered seamen. *See*, *e.g.*, *Wilson v. The Ohio*, 30 F. Cas. 150 (E.D. Pa. 1834) (No. 17,825); *Allen v. Hallet*, 1 F. Cas. 472, 472-74 (No. 223) (S.D.N.Y. 1849). Further, as the Court explained regarding arbitration, shipboard surgeons, who tended to injured sailors, were even considered "seamen." *See New Prime*, at 542-43.

interstate freight. *See* Brief of Respondent at 14-16, 26 *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309); *Balt. & Ohio Sw. R. R. Co. v. Burtch*, 263 U.S. 540, 544 (1924).

As Congress intended to use the term "seamen" according to its accepted definition in the 1920s, it likely intended "railroad employees" to incorporate a group of workers associated with the conduct and business of trains into the exemption. 9 U.S.C. § 1; *see New Prime*, 139 S. Ct. at 539; *Seamen*, *Black's Law Dictionary* (3d ed. 1933). The common link between railroaders and seamen is their active engagement in the process of moving goods into the channels of interstate commerce.[8] Therefore, Congress intended the residual clause to apply to similar classes actively engaged in the flow of interstate commerce. The language of the residual clause supports this interpretation pursuant to the maxim of *noscitur a sociis*. *See Lagos*, 138 S. Ct. at 1688-89.

At the time of the FAA's enactment, the phrase "interstate commerce" was a general phrase modifying the term "commerce." *See Interstate Commerce*, *Black's Law Dictionary* (2d ed. 1910). The term "commerce" was not limited to "only the purchase, sale, and exchange of commodities, but also [included] the instrumentalities

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[8] As discussed *infra* at 18-19, this commonsense application is the test adopted by the Seventh Circuit here and by many of the circuit courts. *See*, *e.g.*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); *Carmona v. Domino's Pizza, LLC*, No. 21-55009, 2021 U.S. App. LEXIS 38045 (9th Cir. Dec. 23, 2021); *Singh v. Uber Techs, Inc.*, 939 F.3d 210 (3d Cir. 2019); *Palcko v. Airborne Express, Inc.*, 372 F.3d 588 (3d Cir. 2004).

and agencies by which it is promoted and the means and appliances by which it is carried on." *Commerce*, *Black's Law Dictionary*, (2d ed. 1910).[9] Thus, at the time, "most people [] would have understood interstate commerce" to refer to the necessary means and instruments of commerce, as well as to the transportation of goods itself. *New Prime*, 139 S. Ct. at 539.

B. The residual clause exempts workers, like those in Ms. Saxon's class, who perform necessary loading and unloading of goods for travel in interstate commerce.

Applying the definition of interstate commerce as understood at enactment, the common trait shared by railroaders, seamen, and other workers similarly engaged was that their labor was a necessary instrument for the flow of goods between the states. The necessary work performed by seamen and railroaders was the loading and unloading of goods, as well as the transportation of goods. *See* Brief of Respondent at 12, 14-17, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). Thus,

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[9] Other dictionaries of the time defined "commerce" similarly, extending it to the "instrumentalities and means" of commerce as well as mere transportation. *See* Benjamin W. Pope, Compiler, *Legal Definitions: A Collection of Words and Phrases as Applied and Defined by the Courts, Lexicographers and Authors of Books on Legal Subjects* (1919-1920) ("The sale and delivery of goods or manufactured commodities by a citizen or corporation of another state in the usual course of business by the usual instrumentalities and means.").

Congress's reference to these professions targeted both aspects of their labor—loading *and* transporting.

As this Court recognizes, "Congress's demonstrated concern [in passing Section 1 was] with transportation workers and their necessary role in the free flow of goods." *Circuit City*, 532 U.S. at 121. It does not follow that Congress would insulate the *transport* of goods while leaving unaffected the actual *movement* of the goods onto the instrumentalities of interstate commerce. If Congress intended to exempt only the act of transportation itself, it would have done so. *See New Prime*, 139 S. Ct. at 541.[10] Instead, Congress spoke of "commerce" obliquely, necessarily incorporating the general definition at the time, including the "instrumentalities" by which interstate commerce functioned. *See Commerce*, *Black's Law Dictionary* (2d ed. 1910). Therefore, the class included in the residual clause must contain at least workers who perform the necessary loading and unloading of goods because they are actively engaged in the flow of interstate commerce.

The exemption covers modern work that is a necessary instrument or means to the flow of goods in interstate commerce. Part of the work that Ms. Saxon

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[10] In Section 1, Congress declined to use either " 'employees' or 'servants,' the natural choice if the term 'contracts of employment' addressed them alone." *New Prime*, 139 S. Ct. at 541. Similarly, if Congress intended to "address[ ] [transportation] alone," it could have done so, but instead it addressed *commerce* at large. *New Prime*, 139 S. Ct. at 541. While Congress's choice of specific language "may not mean everything . . . it does supply further evidence still that Congress used the term . . . in a *broad sense*." *New Prime*, 139 S. Ct. at 541 (emphasis added).

and her class perform–loading and unloading goods onto interstate air commerce–is similar to that of the work performed by seamen and railroaders. *See* Brief of Respondent at 13-18, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). Just as the work of seamen and railroaders was a necessary means to engage in interstate commerce in the 1920s, so too, the work of air cargo loaders is a necessary means to engage in modern interstate commerce. Any serious interruption in the service of seamen or railroaders would slow down and obstruct the free and steady flow of commerce. Serious interruptions in the performance of loading and unloading goods for interstate air commerce pose the same disruption Congress sought to redress with Section 1.[11] Without the labor of Ms. Saxon and her class, modern interstate air commerce would be impossible. Ms. Saxon's class is a necessary part of the flow of interstate commerce and is exempted under the residual clause of Section 1 of the Federal Arbitration Act.

[11] *See infra* at 15-16 (discussing the reasonable purpose of the FAA).

II. Finding that Ms. Saxon and the Narrow Class She Represents are Exempt is Consistent with the Express Language of the FAA and Furthers the Legislative Purpose of the Act.

A. Recognizing that airline cargo loaders are exempt under Section 1 of the FAA upholds the legislative intent to prevent labor disruptions in the flow of interstate commerce.

This Court has acknowledged that the FAA reflects Congress's efforts to mitigate judicial hostility to arbitration agreements. *See Circuit City*, 532 U.S. at 111, 118. However, the FAA's policy preference is expressly limited. *See New Prime*, 139 S. Ct. at 543.[12] This Court recognizes the reasonable assumption that the Section's exemption was due to concerns regarding labor disputes involving interstate commerce. *See Circuit City*, 532 U.S. at 121 (inferring "Congress excluded [the class in Section 1] . . . from the FAA for the simple reason that it did not wish to unsettle established or

[12] "While a court's authority under the Arbitration Act to compel arbitration may be considerable, it isn't unconditional. . . . [T]his authority doesn't extend to *all* private contracts, no matter how emphatically they may express a preference for arbitration." *New Prime*, 139 S. Ct. at 537. Moreover, *New Prime* expressly acknowledges the legislature's decision to limit the FAA. *See New Prime*, 139 S. Ct. at 543 ("If courts felt free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal, we would risk failing to 'take account of' legislative compromises essential to a law's passage and, in that way, thwart rather than honor 'the effectuation of congressional intent.' ") (internal alterations omitted).

developing statutory dispute resolution schemes covering specific workers"). Adhering to the plain meaning of the statutory language by exempting workers directly engaged in interstate commerce, like Ms. Saxon, furthers the legislative purpose of the FAA.

Economic data reflect the importance of airlines as a channel of interstate commerce. Each part of the work involved in interstate commerce, from loading and unloading cargo, to the physical transportation of goods, are equally critical to effectuating the objective of reaching destinations across state and international boundaries. *See* Bureau of Transp. Stat., *Transportation Statistics Annual Report 2020* 5-1, 5-3 (2020), https://rosap.ntl.bts.gov/view/dot/53936. Airline cargo loaders serve critical roles in interstate commerce mirroring the work performed by seamen and railroad workers. Indeed, because of the critical role played by airlines, as early as 1935, President Roosevelt recommended that "'[a]ir transportation' . . . 'should be brought into a proper relation to other forms of transportation by subjecting it to regulation by the same agency,'" reflecting the desires of Congress and the Executive to regulate interstate air commerce similarly to other channels of interstate commerce. *See*, *e.g.*, Fed. Aviation Admin., *FAA Historical Chronology: Civil Aviation and the Federal Government, 1926–1996* 19 (1998), https://rosap.ntl.bts.gov/view/dot/37596.

Since 1925, not only have the transportation industries drastically changed, but today, the duties associated with the workers enumerated in Section 1 of the FAA have similarly diversified for more efficient

operations at a much larger scale. Here, because airline cargo loaders perform nearly identical work to that of seamen and railroad workers in 1925, they are constituent parts of effectuating interstate commerce. *See* Brief of Respondent at 16-18, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309).

The importance of interstate air commerce is illustrated through the Department of Transportation's annual report, where it was found that airports maintained thirty-two percent of the most used transportation methods in the U.S. in 2019. Bureau of Transp. Stat., *Transportation Statistics Annual Report 2021* 2-3 (2021), https://www.bts.gov/tsar. Those same airports accounted for nearly one trillion dollars entering the U.S. in shipments. *Id.*[13] More than one billion passengers traveled by commercial airlines in 2019, mostly with luggage, an increase of 30 percent over the decade. *Id*. at 1-2–1-3. Interstate air commerce is an increasingly important channel among the states and abroad and is just as critical to ensuring the flow of goods as the rail and shipping industries were in 1925. As seamen and railroaders are both exempt under Section 1, so too is Ms. Saxon's class.

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[13] Even as the number of people traveling by air decreased due to the pandemic, 2020 was a record year for airline cargo: "[f]rom May 2020 through the end of the year, U.S. airlines carried 1.34 [million] more tons of cargo than in the same period in 2019 for a jump of 11%." Bureau of Transp. Stat., *Commercial Aviation in 2020*, DATA SPOTLIGHTS (Mar. 4, 2021), https://www.bts.gov/data-spotlight/commercial-aviation-2020-downturn-airline-passengers-employment-profits-and-flights.

Failing to recognize the exemption of Ms. Saxon's class undermines the purpose of the FAA. The contemporary regulatory schemes available before and during the adoption of the FAA also provide a framework for interpreting its provisions. *See*, *e.g.*, Transportation Act of 1920, §§ 300, 316, 41 Stat. 456; Railway Labor Act, 45 U.S.C. §§ 151-165, 181-188.[14] Because Congress created an applicable alternative structure for workers under these schemes, refusing to apply the FAA's exemption to Ms. Saxon's class will frustrate the legislative purpose of avoiding disruptions in commerce. *See Circuit City*, 532 U.S. at 121 (recognizing that Congress "did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers").[15]

Today, concerns relating to the free flow of goods are no less essential than they were in 1925. Physically loading the shipped goods onto airplanes is just as important as flying the goods across state borders. Disruptions in loading and unloading cargo from planes based on case-by-case arbitrations could lead to interruptions and delays in the shipment of goods. Instead,

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[14] Congress incorporated the airline industry into the RLA in 1936, carrying airline workers engaged in commerce into Section 1. *See* 45 U.S.C. § 181. Congress reasonably sought to regulate airline carriers' labor relations for precisely the same reason it sought to regulate the railroad industry: both were critical for interstate commerce. *See* 45 U.S.C. § 151a.

[15] *See Circuit City*, 532 U.S. at 121 (noting "[i]t would be rational for Congress to ensure that workers in general would be covered by the provisions of the FAA, while reserving for itself more specific legislation for those engaged in transportation").

the overarching purpose of the Railway Labor Act and the FAA may be effectuated by exempting Ms. Saxon's class to allow the resolution of a multitude of disputes in one case. *See* 45 U.S.C. § 151a (noting the primary purpose of the RLA was "[t]o avoid any interruption in commerce or the operation of any carrier engaged therein . . . [by] provid[ing] for the prompt and orderly settlement of all disputes"). Furthermore, the tension between both the FAA and the Railway Labor Act's exclusive jurisdiction would be averted by affirming the Seventh Circuit's conclusion that Ms. Saxon and her class are exempt from the FAA.[16] Reading the FAA's exemption to include airline cargo loaders such as Ms. Saxon would resolve disputes concerning rates of pay expeditiously while limiting any disruptions to the flow of interstate commerce, thereby upholding Congress's purpose in enacting Section 1.

B. Ms. Saxon's class of airline cargo loaders is narrow and the only class before the Court.

Ms. Saxon falls within a narrow class of workers defined by their labor in the movement of goods for travel in interstate commerce. This class is necessarily

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[16] *See* 45 U.S.C. § 153(h) (conferring jurisdiction over disputes involving railroad employees and the railroads themselves to the National Railway Adjustment Board); *see also* 45 U.S.C. § 185 (recognizing the same "powers and duties prescribed and established by . . . section 153 . . . are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board").

narrow because it extends only to those workers who physically move goods into and out of the flow of interstate commerce. Ms. Saxon's case concerns the narrow issue of the application of the residual clause to this single class of workers. *See Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). Her case does not concern the nebulous application of Section 1 to all individuals who may someday interact with the stream of interstate commerce. Those classes of workers are not before the Court. This Court should not be misdirected by Southwest and its supporting *amici's* extremist argument that to honor the exemption here leads to a "logistical nightmare . . . appl[ying] to more than 14,000 . . . employees," each requiring an individual and circuit-specific resolution "with widely varied results." Pet. for Writ of Cert. at 28, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309).[17] Members of Ms. Saxon's class are not gate agents, nor are they analogous to Uber, Lyft, or Amazon delivery drivers.[18]

The narrow question before this Court is *exclusively* whether airline cargo loaders of Ms. Saxon's class are "transportation workers" within the meaning of the residual clause. *See Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). The answer to that question is yes. Ms.

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[17] Judicial restraint counsels against resolving questions of law "except when necessary to rule on particular claims." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 373 (2010).

[18] *See* Brief for Lyft, Inc. as *Amicus Curiae* Supporting Petitioner, *Saxon*, 993 F.3d 492 (No. 21-309); Brief for Uber Technologies, Inc. as *Amicus Curiae* Supporting Petitioner, *Saxon*, 993 F.3d 492 (No. 21-309); Brief for Amazon.com, Inc. as *Amicus Curiae* Supporting Petitioner, *Saxon*, 993 F.3d 492 (No. 21-309).

Saxon's class falls within the explicit text of the residual clause because she is directly engaged in the work necessary for goods to flow in interstate commerce. *See* Brief of Respondent at 17-18, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). Recognizing that the exemption lawfully applies to her class fulfills the legislature's purpose and respects the proper role of this nation's courts.[19] "No less than those who came before [her, Ms. Saxon,] is entitled to the benefit of that same understanding today." *New Prime*, 139 S. Ct. at 544.

III. The Seventh Circuit's Analysis Mirrored Other Circuits and Properly Held Ms. Saxon's Class Exempt from the FAA.

The narrow category of work exempt from the FAA requires the class of workers to physically move goods into the flow of commerce. Ms. Saxon physically loads and unloads goods that flow along the channels of interstate commerce. The Seventh Circuit's interpretation of the residual clause conforms with the rulings of several other circuit courts. *See*, *e.g.*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 13 (1st Cir. 2020) (holding the residual clause applies to "workers who transport goods or people within the flow of interstate commerce, not simply those who physically cross state lines in the course of their work"); *Carmona v. Domino's Pizza, LLC*, No. 21-55009, 2021 U.S. App. LEXIS 38045, at *7 (9th Cir. Dec. 23, 2021) (holding the

[19] "By respecting the qualifications of § 1 today, [this Court] 'respect[s] the limits up to which Congress was prepared' to go when adopting the Arbitration Act." *New Prime*, 139 S. Ct. at 543.

residual clause applies to workers who "operate in a 'single, unbroken stream of interstate commerce' that renders interstate commerce a 'central part' of their job description"); *Singh v. Uber Techs., Inc.*, 939 F.3d 219, 226 (3d Cir. 2019) (holding the residual clause applies to workers "engaged in interstate commerce, or in work so closely related thereto as to be in practical effect part of it"); *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593 (3d Cir. 2004) (holding the residual clause applied to the plaintiff because her "direct supervision of package shipments . . . [was] 'so closely related [to interstate and foreign commerce] as to be in practical effect part of it'"); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 915 (9th Cir. 2020) (holding that the plaintiff's class of workers are transportation workers included in the residual clause because the goods "remain in the stream of interstate commerce until they are delivered").[20] Therefore, in keeping with the circuit courts' thoughtful, accurate approach, the residual clause should also apply to transportation workers like Ms. Saxon.

The Seventh Circuit applied the same textual analysis as these circuits in holding that Ms. Saxon is exempt from the FAA because her class of workers are actively engaged in moving goods. *Saxon*, 993 F.3d at 503. In its analysis, the Seventh Circuit relied on prior

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[20] Southwest heavily relies upon *Eastus v. ISS Facility Services* and *Hill v. Rent-A-Center*; however, these opinions relied solely on prior circuit precedent. *See Eastus v. ISS Facility Servs., Inc.*, 960 F.3d 207 (5th Cir. 2020)*; Hill v. Rent-A-Ctr.*, 398 F.3d 1286 (11th Cir. 2005).

circuit precedent to support its conclusion. *See Wallace v. Grubhub Holdings. Inc.*, 970 F.3d 798, 802 (7th Cir. 2020). Southwest argues that the Seventh Circuit misapplied *Wallace* and that *Wallace* supports its cramped reading of the FAA exemption. Brief for Petitioner, at 9-10, 20-21, *Saxon*, 142 S. Ct. 638 (2021) (No. 21-309). While the court in *Wallace* concluded that a Grubhub delivery person who transported out-of-state goods was not within the exemption, the analysis when correctly applied, shows that Ms. Saxon and the class she represents are within the exemption. *Wallace*, 970 F.3d at 803. The Seventh Circuit recognized that the Grubhub driver's role in the flow of interstate commerce was extremely attenuated.[21] The Grubhub driver only delivered goods that had already completed the journey in interstate commerce. In contrast, Ms. Saxon and her class are actively engaged in the loading and unloading of goods for travel along the channels of interstate commerce. Without the labor of her class, interstate commerce would not exist.

The court in *Wallace* found that the residual clause covers workers who can "demonstrate that the interstate movement of goods is a central part of the

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[21] *See Wallace*, 970 F.3d at 802 (rejecting the argument, among others, that delivering chocolate, originally produced in Switzerland, qualified as engagement in interstate commerce). The workers must have more than a passive role in the transportation of goods to fall within the FAA's residual clause to validly claim the exemption. *See Circuit City*, 532 U.S. at 119 (recognizing that the residual clause applies narrowly to specific classes of workers engaged in commerce rather than "to all employment contracts," eventually relatable to interstate commerce).

job." *Wallace*, 970 F.3d at 801. The court noted the importance of the workers being "active[ly] engag[ed] in the enterprise of moving goods," explaining how "a class of workers must themselves be 'engaged *in the channels* of foreign or interstate commerce.'" *Wallace*, 970 F.3d at 802 (quoting *McWilliams v. Logicon, Inc.*, 143 F.3d 573, 576 (10th Cir. 1998) (emphasis added by Seventh Circuit)). It is beyond dispute that Ms. Saxon and her class are engaged in the channels of foreign and interstate commerce. In practical terms, without Ms. Saxon's class, the cargo never boards the plane, never enters interstate commerce, and never arrives at its destination. The Seventh Circuit, employing the same analysis as the First, Third, and Ninth Circuits, correctly held that Ms. Saxon's class is within the residual clause.

CONCLUSION

The plain meaning of the text of the Federal Arbitration Act, as well as its history and purpose, supports the Seventh Circuit's opinion in *Saxon*. The FAA's residual clause exempts those "engaged in interstate commerce" and the clause should be interpreted to include workers like Ms. Saxon. She is a member of a class of airline cargo loaders, who load and unload goods for transport in the flow of interstate commerce. Like seamen and railroad employees at the enactment of the FAA, the issue regarding the exemption of airline cargo loaders is narrow. Loading and unloading is necessary for goods to flow in interstate commerce. If

the residual clause of Section 1 reaches any worker, it must reach Ms. Saxon's class. This Court should affirm the Seventh Circuit's opinion in *Saxon* and find that airline cargo loaders, like Ms. Saxon, qualify as "transportation workers" under Section 1 of the FAA.

Respectfully submitted,

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