No. 21-309

In the
Supreme Court of the United States

SOUTHWEST AIRLINES CO.,

***Petitioner*,**

v.

LATRICE SAXON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF PUBLIC JUSTICE AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

ELLEN NOBLE
PUBLIC JUSTICE
1620 L Street N.W.
Suite 630
Washington, DC 20036
(202) 797-8600

JOHN J. KORZEN
Counsel of Record
WAKE FOREST UNIVERSITY SCHOOL OF LAW APPELLATE ADVOCACY CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

Counsel for Amicus Curiae

*Gibson*Moore Appellate Services, LLC
206 East Cary Street♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Other Authorities:

INTEREST OF THE AMICUS CURIAE[1]

Public Justice is a nonprofit legal advocacy organization specializing in precedent-setting, socially significant civil litigation, with a focus on fighting corporate and governmental misconduct. The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of workers, consumers, and people whose civil rights have been violated to seek redress for their injuries in the civil court system.

As part of its Access to Justice Project, Public Justice appeared before this Court as counsel of record for Respondent in *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019), where the Court held that transportation workers, including independent contractors, are exempt from the Federal Arbitration Act. Public Justice has a continued interest in ensuring that the exemption in section 1 of the FAA is properly interpreted in accordance with its text and the historical and statutory context in which the statute was enacted.

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[1] This brief was prepared by counsel for amicus curiae and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief. All parties have given written consent to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus curiae Public Justice agrees fully with Respondent's contention that airline "cargo loaders are covered under *any* plausible reading of the residual clause" in section 1 of the Federal Arbitration Act (FAA). Resp. Br. 42. Public Justice writes separately to address Petitioner's radical argument that the residual clause applies only to transportation workers who physically cross national or state borders. The Court should refuse to inject Petitioner's border crossing requirement into the residual clause.

The text does not support border crossing. Congress could have included such a restriction but did not. And the words "any other" preceding "class of workers engaged in foreign or interstate commerce" do not limit the class to the subset of workers who cross borders. In addition, a border crossing requirement is inconsistent with this Court's practical interpretation of similar "engaged in commerce" provisions. The *ejusdem generis* canon does not support a border crossing condition, either.

The Court should also look to similar "engaged in commerce" provisions in federal statutes, particularly the Federal Employers' Liability Act and the Fair Labor Standards Act, which are not confined to workers who cross borders.

Finally, a border crossing prerequisite would lead to absurd results. Engaging in foreign commerce would require workers to traverse national borders, and domestic transportation workers performing the same work would be classified differently based solely

on the happenstance of crossing state lines. The Court should eschew such a formalistic approach in favor of its established, practical analysis of whether one's work is so directly related to interstate commerce as to be a part of it. Based on text, based on precedent, and in order to avoid absurd results, the Court should conclude that a cargo loader at Chicago Midway International Airport is a worker engaged in foreign or interstate commerce.

ARGUMENT

I. The residual clause in FAA Section 1 is not limited to transportation workers who cross borders.

Section 1 of the FAA provides that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or *any other class of workers engaged in foreign or interstate commerce*." 9 U.S.C. § 1 (emphasis added). The final, "residual," clause of Section 1 exempts employment contracts of transportation workers. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001). Section 1's residual clause is interpreted based on its ordinary meaning when the FAA was enacted in 1925. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539-40 (2019).

Petitioner impliedly concedes that Respondent is a transportation worker. But Petitioner argues that Respondent is not the right "*kind*" of transportation worker to be covered by the residual clause. Pet. Br. 1, 16. Respondent is the wrong "*kind*" of transportation worker, Petitioner asserts, because her job does not require her to cross national or state borders. *Id.* at 11.

Petitioner's "must cross borders" test should be rejected. The text of Section 1 does not support it. The interpretation of similar statutory text does not support it. And it would lead to absurd results.

A. The residual clause's text does not support Petitioner's border crossing argument.

For several reasons, the text of Section 1's residual clause does not support a border crossing limitation. Respondent is the right "*kind*" of transportation worker, despite Petitioner's protestations to the contrary, because the text does not support a border crossing work requirement.

First, a border crossing requirement is nowhere found in the text. Section 1 exempts "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Congress did not limit workers engaged in foreign or interstate commerce to the subset of workers who cross borders. Petitioner has inappropriately read language into the text. *See, e.g.*, *Romag Fasteners, Inc. v. Fossil, Inc.*, 140 S. Ct. 1492, 1492 (2020) ("Nor does this Court usually read into statutes words that aren't there.").

Congress could have easily imposed a limitation on the transportation worker exemption, such as "any other class of workers engaged in foreign or interstate commerce *who cross a national or state border*," but it did not, and this Court accordingly should not. *See McElroy v. United States*, 455 U.S. 642, 656 (1982) ("While Congress could have written the statute to produce this result, there is no basis for us to adopt such a limited reading."); *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593 (3d Cir. 2004) ("Had Congress

intended the residual clause of the exception to cover only those workers who physically transported goods across state lines, it would have phrased the FAA's language accordingly.").

Second, not only is a border crossing requirement absent from the residual clause's text, it is inconsistent with the terms that are present. Petitioner's border crossing test would subdivide the class of workers engaged in foreign or interstate commerce, contrary to the residual clause's language. The clause begins with the phrase "any other." Those words should be given effect. As this Court has often stated, it is "the 'cardinal principle' of interpretation that courts 'must give effect,' if possible, to every clause and word of a statute.'" *Parker Drilling Mgmt. Servs., Inc. v. Newton*, 139 S. Ct. 1881, 1890 (2019) (quoting *Loughrin v. United States*, 573 U.S. 351, 358 (2014)).

The words "any" and "any other" ordinarily have an expansive meaning. *See, e.g.*, *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (holding that because "any" in phrase "any term of imprisonment" has an expansive meaning and Congress added no language limiting the word's breadth, it must be read to include terms imposed by both federal and state courts). Applied to section 1, "any other class of workers engaged in foreign or interstate commerce" should be interpreted as similar to "seamen" and "railroad employees," not limited to the subset of workers engaged in commerce who cross borders. Petitioner's

border crossing test reads "any other" out of the residual clause.[2]

Petitioner ignores "the whole value of a generally phrased residual clause" like the one here, which "is that it serves as a catchall for matters not specifically contemplated—known unknowns, in the happy phrase coined by Secretary of Defense Donald Rumsfeld." *Republic of Iraq v. Beaty*, 556 U.S. 848, 860 (2009). If Congress wanted to limit the class of foreign and interstate transportation workers to those who physically cross borders, it would have done so. *See id.* With no such textual limitation, the residual clause literally applies to "any other class" of foreign or interstate workers regardless of whether they themselves cross borders.

Third, Petitioner's formalistic border crossing limitation clashes with this Court's longstanding practical test for when an employee engages in interstate commerce. *See, e.g.*, *Mitchell v. Lublin, McGaughy & Assocs.*, 358 U.S. 207, 212 (1959) ("Where employees' activities have related to interstate instrumentalities or facilities, such as bridges, canals and roads, we have used a practical test to determine whether they are 'engaged in commerce.'"); *Mitchell v. C.W. Vollmer & Co.*, 349 U.S. 427, 429 (1955) ("The question whether an employee is engaged 'in commerce' within the meaning of the present Act is determined by practical considerations, not by technical conceptions.").

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[2] This Court had no reason to consider the "any other" residual clause language in *New Prime* because the parties agreed that the respondent qualified as a "worker[ ] engaged in . . . interstate commerce." 139 S. Ct. at 539.

In determining as a practical matter whether an employee is engaged in interstate commerce, this Court has long held that "[t]he test is whether the work is so directly and vitally related to the functioning of an instrumentality or facility of interstate commerce as to be, in practical effect, a part of it, rather than isolated local activity." *Id.* This Court has never required border crossing. *See, e.g.*, *Lublin*, 358 U.S. at 212 (holding that stenographers and engineers were engaged in commerce).

Airline workers such as Respondent easily satisfy this Court's practical test, for their work is "directly and vitally related" to interstate commerce, the transport of goods and people by air across the country and the world, "rather than isolated local activity." And baggage loaders in particular are clearly engaged in interstate commerce. *See United States v. Yellow Cab Co.*, 332 U.S. 218, 228 (1947) ("The transportation of . . . passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce. When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character."), *overruled on other grounds by Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

Finally, the *ejusdem generis* canon does not support the limiting of transportation workers to those who cross borders. Petitioner tries to invoke the *ejusdem generis* canon, Pet. Br. 22-30, but it provides no support for Petitioner's border crossing argument.

Under that canon, "where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 588 (1980). As Respondent explains, "seamen" and "railroad employees" were *not* defined by border crossing when the FAA was enacted in 1925, so there is no reason to insert that limitation into the residual clause. *See* Resp. Br. 29-35. In addition, the *ejusdem generis* canon supports placing Respondent in the category of "airline employee," similar to and consistent with the specific terms "seamen" and "railroad employees" used immediately before the residual clause. Applying *ejusdem generis*, Respondent should not be placed in the smaller category proposed by Petitioner of baggage loading.

Moreover, several circuits have followed this Court's use of *ejusdem generis* in *Circuit City* to construe section 1's residual clause, and none have held that transportation workers only fall within the exemption if they themselves cross state lines. *See Rittman v. Amazon.com, Inc.*, 971 F.3d 904, 918 (9th Cir. 2020) (holding delivery drivers engaged in the stream of interstate commerce were not required to cross state lines to be exempt); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 801-02 (7th Cir. 2020) (holding section 1 exemption covers workers "connected . . . to the act of moving . . . goods across state or national borders"); *Singh v. Uber Techs., Inc.*, 939 F.3d 210, 220 (3d Cir. 2019) (holding residual clause applies to workers "actually engaged in the movement of interstate or foreign commerce or in work so closely related thereto as to be in practical effect part of it"); *see also Osvatics v. Lyft, Inc.*, 535 F. Supp. 3d 1, 17 (D.D.C. 2021) (Jackson, Ketanji Brown,

J.) ("the applicability of the section 1 residual clause does not depend on whether the class of workers physically crosses state lines").

None of these judicial applications of *ejusdem generis* to section 1's exemption would exclude transportation workers like Respondent. Respondent belongs to a class of workers who are engaged in moving goods across state lines. In the words of those courts employing *ejusdem generis*, which in turn followed this Court's rules for what it means to be engaged in commerce, Respondent is engaged in the stream of commerce and "actually engaged in the movement of interstate . . . commerce or in work so closely related thereto as to be in practical effect part of it." *Singh*, 939 F.3d at 220.

While *Circuit City* relied in part on *ejusdem generis* to conclude that the residual clause applies to transportation workers and not all workers, that was a different issue from whether transportation workers must cross state lines in order to be engaged in interstate commerce. *See Rittman*, 971 F.3d at 914 ("*Circuit City* did not address what is at issue here."). Petitioner hopes *Circuit City*'s use of *ejusdem generis* to support the narrower interpretive option there will inevitably lead to another restrictive interpretation here, despite the issues in the two cases being very different, but *ejusdem generis* is not akin to the children's game of telephone in which each successive interpretation of a statute makes it less recognizable. The canon does not support Petitioner's border crossing theory. For all these reasons, the residual clause applies to transportation workers whose work is directly related to interstate commerce and does not require such workers to physically cross borders.

B. Similar statutory provisions apply to workers who do not cross borders.

More than a dozen federal statutes use the phrase "engaged in commerce," "engaged in . . . interstate or foreign commerce," or "engaged in foreign commerce."[3] None have been construed to require the crossing of state lines. When interpreting similar FAA language, this Court should look to precedent interpreting these other statutes, for similar language in two statutes is a "strong indication" that the two statutes should be interpreted in a similar manner. *See Northcross v. Bd. of Ed. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) ("The similarity of language in § 718 [of the Emergency School Aid Act] and § 204(b) [of the Civil Rights Act of 1964] is, of course, a strong indication that the two statutes should be interpreted *pari passu*.")

In particular, courts have looked to the Federal Employers' Liability Act (FELA) and the Fair Labor Standards Act (FLSA) when interpreting the FAA's

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[3] *E.g.*, 7 U.S.C. § 511a (regulating tobacco producers); 13 U.S.C. § 303 (relating to Secretary of the Treasury functions); 15 U.S.C. § 13 (provision of the Clayton Act); 15 U.S.C. § 26a(a) (restrictions on purchasing gasohol and synthetic motor fuel); 15 U.S.C. § 291 (prohibiting stamping with the words "United States assay"); 15 U.S.C. § 1221(b) (governing automobile dealer suits); 15 U.S.C. § 1607(c) (Federal Trade Commission enforcement authority); 15 U.S.C. § 1679h(b)(2)(A) (governing violations of the Federal Trade Commission Act); 18 U.S.C. § 1962 (Racketeer Influenced and Corrupt Organizations); 21 U.S.C. § 373 (relating to carriers engaged in interstate commerce); 29 U.S.C. § 207(a) (Fair Labor Standards Act overtime provision); 42 U.S.C. § 6276 (regulating energy programs); 42 U.S.C. § 6391 (preventing foreign nations from discriminating against U.S. citizens engaged in commerce in those nations).

residual clause exemption. *See, e.g.*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 19-22 (1st Cir. 2020) (relying on FELA to interpret FAA); *Nieto v. Fresno Beverage Co., Inc.*, 245 Cal. Rptr. 3d 69, 76 (Cal. Ct. App. 2019) (relying on FLSA to interpret FAA). Just as a worker can engage in interstate commerce without crossing state lines under the FELA and the FLSA, a worker should not have to cross state lines to be engaged in interstate commerce under the exemption in section 1 of the FAA.

1. Workers may engage in interstate commerce under the FELA without crossing state lines.

Under the FELA, workers do not need to cross state lines to be engaged in interstate commerce. The FELA requires railroads "engaged in commerce between any of the several States" to "pay damages to any person suffering injury while he is employed by such carrier in such commerce." 45 U.S.C. § 51. FELA coverage requires the employer and employee to have been engaged in interstate commerce at the time of injury. *Balt. & Ohio Sw. R.R. Co. v. Burtch*, 263 U.S. 540, 542 (1924). Because Congress "incorporat[ed] almost exactly the same phraseology into the Arbitration Act of 1925," it must have had the FELA in mind when drafting the FAA. *Tenney Eng'g, Inc. v. United Elec. Radio & Machine Workers of Am. (U.E.) Local 437*, 207 F.2d 450, 453 (3d Cir. 1953). This Court has interpreted FELA's similar language to include employees who never crossed state lines. *See Phila. & Reading Ry. Co. v. Hancock*, 253 U.S. 284, 286 (1920) ("The determining circumstance is that the [intrastate] shipment was but a step in the

transportation of the [goods] to real and ultimate decisions in another state.").

In *Hancock*, the employee operated a train to transport coal from mines in Pennsylvania to other locations within the state. *Id.* at 285. Some train cars contained coal with an ultimate destination outside Pennsylvania. *Id.* This Court held that the employee was engaged in interstate commerce even though he never left Pennsylvania, because "[t]he coal was in the course of transportation to another state when the cars left the mine." *Id.* at 286. The employee, though never crossing state lines himself, was involved in "a step in the transportation of the coal to real and ultimate destinations in another state." *Id.* Similarly, this Court earlier held that a switch engine foreman injured on a train hauling lumber in Florida was engaged in interstate commerce because the lumber's ultimate destination was New Jersey. *See Seaboard Air Line Ry. v. Moore*, 228 U.S. 433, 435 (1913) (stating it "plain" that lower court's ruling employee was not engaged in interstate commerce was "without merit").

More than a century ago, this Court held that FELA's coverage for workers engaged in commerce extended to employees who do not even personally transport goods or passengers, so long as the employee's work was "so closely related to" interstate transportation "as to be practically a part of it." *Shanks v. Del., Lackawanna & W. R.R. Co.*, 239 U.S. 556, 558 (1916). Under this standard, this Court held that an employee was engaged in interstate commerce when unloading goods off a train that were shipped from Kentucky to Indiana, even though the employee himself never transported goods. *Burtch*, 263 U.S. at

543-45. Rather, it was enough that the employee unloaded the goods after the goods had crossed state lines. *Id.*

The First Circuit and the Ninth Circuit have relied on the FELA to conclude that the meaning of "engaged in interstate commerce" when the FAA was enacted was not limited to transportation workers who crossed state lines. *Waithaka*, 996 F.3d at 17-23; *Rittmann*, 971 F.3d at 911-15. Here, the Seventh Circuit below properly joined the First and Ninth Circuits in looking to the FELA to help answer the question of whether Respondent is a transportation worker engaged in interstate commerce. *Saxon v. Southwest Airlines Co.*, 993 F.3d 492, 500-02 (7th Cir. 2021). As a contemporaneous statute with "language nearly identical to that of Section 1 of the FAA," it would be odd for Congress to have intended the language in the two statutes to have different meanings. *Waithaka*, 996 F.3d at 19.

Petitioner argues that the "FELA does not inform the meaning of the FAA" because the FELA is a remedial law that creates claims whereas the FAA controls how claims are resolved. Pet. Br. at 36. This argument is unpersuasive and ignores the plain language of these statutes. The First Circuit explicitly rejected this argument, noting that this Court never referenced the FELA's remedial purpose when holding that the FELA does not require a worker to cross state lines to be engaged in interstate commerce. *Waithaka*, 996 F.3d at 22 (citing *Hancock*, 253 U.S. at 285-86). Moreover, all statutes are "remedial" to some extent, because all statutes are designed to remedy some problem. Antonin Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40

Case W. Res. L. Rev. 581, 585 (1989-90). Petitioner's reliance on the "remedial statute" canon overlooks how "there is not the slightest agreement on what . . . the phrase 'remedial statutes'" means. *Id.* at 583.

Petitioner also turns this Court's FELA case law upside down when it argues that the Court's "practical" interpretation of "interstate commerce" rather than a "technical legal" interpretation explained the Court's "broad construction" of the interstate commerce. *See* Pet. Br. 39 (quoting *Shanks*, 239 U.S. at 558). In fact, as this Court later made clear, the Court's "practical" interpretation of the phrase in *Shanks* was "narrower" than the "technical legal" definition. *See Chicago & N.W. Ry. Co. v. Bolle*, 284 U.S. 74, 78-79 (1931).

In short, because the FAA and the FELA are contemporaneous and linguistically similar statutes, their "engaged in commerce" provisions should be construed similarly.

2. Workers may engage in interstate commerce under the FLSA without crossing state lines.

Case law interpreting the FLSA and the related Motor Carrier Act exemption further shows that workers need not cross state lines to be engaged in interstate commerce. *See Nieto*, 245 Cal. Rptr. 3d at 76 ("[G]uidance regarding the 'engaged in commerce' standard for the FAA's transportation worker exemption may be found in cases discussing an exemption to . . . the Fair Labor Standards Act."). The FLSA requires employers to pay overtime compensation to any employee working more than forty hours per week "who in any workweek is

engaged in commerce or in the production of goods for commerce, or is employed in an enterprise *engaged in commerce*." 29 U.S.C. § 207(a) (emphases added). Under the Motor Carrier Act exemption, the FLSA's overtime-pay requirement does not apply to a private motor carrier's employee when the employee "moves goods in interstate commerce and affects the safe operation of motor vehicles on public highways." *Foxworthy v. Hiland Dairy Co.*, 997 F.2d 670, 672 (10th Cir. 1993) (citing 49 U.S.C. §§ 3102, 10521).

Under these statutes, an employee "does not have to cross state lines to engage in interstate commerce." *McGee v. Corp. Express Delivery Sys.*, No. 01 C 1245, 2003 WL 22757757 at *4 (N.D. Ill. Nov. 20, 2003) (relying on this Court's "practical continuity of movement test" in *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568 (1943)). Rather, "[t]ransportation within a single state may remain 'interstate' in character when it forms a part of a 'practical continuity of movement' across state lines from the point of origin to the post of destination." *Foxworthy*, 997 F.2d at 672 (quoting *Walling*, 317 U.S. at 568). As this Court has noted, "Any other test would allow formalities to conceal the continuous nature of the interstate transit which constitutes commerce." *Walling*, 317 U.S. at 568. It is "practical considerations," not "technical conceptions," that determine whether an employee is engaged in interstate commerce. *C.W. Vollmer & Co., Inc.*, 349 U.S. at 429; *see also South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2092–95 (rejecting a prior, "formalistic" physical presence rule for when states may require an out-of-state entity to collect and remit sales taxes in favor of a new test that considers "the

day-to-day functions of marketing and distribution in the modern economy").

Looking to practical considerations rather than technical conceptions, this Court has clarified that a "break" or "temporary pause" in transportation, such as goods being placed temporarily in a warehouse, does not necessarily terminate the interstate journey of those goods. *Walling*, 317 U.S. at 568-69. Rather, "if the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations, they remain 'in commerce' until they reach those points." *Id.* at 568. Applying these standards, the *Walling* Court reasoned that the employees might, depending on the findings of fact on remand, be engaged in commerce under the FLSA where they worked at branches of a wholesale business constantly receiving merchandise on interstate shipments but did not deliver any of the merchandise across state lines. *Id.* at 565-66, 572.

Furthermore, in *Foxworthy*, the Tenth Circuit held that a route driver who delivered dairy products "solely within the State of Oklahoma" was engaged in interstate commerce for purposes of the Motor Carrier Act. 997 F.2d at 671-72. The dairy products were produced in Fort Smith, Arkansas, and ultimately delivered to a refrigerated trailer in Ponca City, Oklahoma, where the employee would pick them up and deliver them to customers. *Id.* The court held that the employee was engaged in interstate commerce when transporting the dairy products solely within Oklahoma because the moment the products left Arkansas, they were destined for the Ponca City customers. *Id.* at 673. Thus, the employee's intrastate transportation was part of the "practical continuity of

movement" of the dairy products from Arkansas to Oklahoma. *Id.* at 674.

Finally, the California Court of Appeals relied in part on FLSA case law to reject an employer's argument that an employee did not fall under the FAA section 1 exemption because the employee only delivered products within California and did not cross state lines. *Nieto*, 245 Cal. Rptr. 3d at 76. Looking at FLSA precedent, the *Nieto* court held there is a "well-established principle [that] '[i]ntrastate deliveries of goods are considered to be interstate commerce if the deliveries are merely a continuation of an interstate journey.'" *Id.* (quoting *Bell v. H.F. Cox, Inc.*, 146 Cal. Rptr. 3d 723, 737 (Cal. Ct. App. 2012)). Thus, the employee there was engaged in interstate commerce while making intrastate deliveries because the intrastate deliveries were a key part of moving the goods from other states to their final destination of California. *Id.* at 77.

Consistent with FELA and FLSA precedent, this Court should reject Petitioner's radical test and instead hold that workers do *not* need to cross state lines to fit within the FAA's exemption for "any other class of workers engaged in foreign or interstate commerce."

C. A border crossing test would lead to absurd results.

The Court should also reject Petitioner's "must cross borders" test because it would lead to absurd and arbitrary results. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("interpretations of a statute which would produce absurd results are to be avoided"); *United States v.*

Turkette, 452 U.S. 576, 580 (1981) ("In interpreting the scope of a statute . . . . absurd results are to be avoided . . . .").

In the residual clause, "Congress demonstrated concern with transportation workers and their necessary role in the free flow of goods," which explains why the FAA exempts "those engaged in transportation." *Circuit City*, 532 U.S. at 121. In light of this Congressional concern with "the free flow of goods" underlying the residual clause, it makes no sense to construe the clause as limited to only the subset of transportation workers who cross borders. Transportation workers who do not themselves cross borders have a "role in the free flow of goods," too.

Furthermore, Petitioner's test would be absurd when applied to transportation workers engaged in *foreign* commerce, because they would be excluded from engagement in foreign commerce unless they themselves crossed international borders. Limiting "workers engaged in foreign . . . commerce" to those who cross international borders ignores the practical nature of commerce and the numerous workers who engage in foreign commerce while remaining within the fifty states and American territories. Simply put, workers need not have their passports stamped to engage in foreign commerce.

Petitioner's test would also lead to absurd and arbitrary results for transportation workers in the continental United States. Consider, for example, a delivery driver who completes the shipment of a product flown from Los Angeles to the Tri-Cities Airport in Blountville, Tennessee, a trip of some 2,300 miles across seven state lines. Under Petitioner's test, a driver assigned to routes in Tennessee who

completed the shipment to a destination in nearby Bristol, Tennessee would *not* be engaged in interstate commerce, while another driver crossing State Street in downtown Bristol to the *Virginia* side of town *would* be. Or take a shipment from Los Angeles to the Kansas City International Airport in Kansas City, Missouri, a trip of 1,600 miles across five state lines. A delivery driver assigned to deliveries on the north side of the Missouri River would *not* be engaged in interstate commerce while completing the shipment to a destination in Missouri, while one who crossed the river to the Kansas side *would* be.[4]

Finally, consider the very locus of this case, Chicago Midway International Airport. Opened in 1927 at the height of the Roaring Twenties, Midway is on Chicago's Southwest Side, twelve miles from the downtown Loop. Midway was the busiest airport in the nation from 1948 through 1960. Petitioner began operating at Midway in 1985, and today Midway is a bustling engine of commerce. The airport has five runways. It is served primarily by Petitioner and also by six other airlines. More than twenty million passengers used Midway in 2019. One can fly directly from Midway to more than eighty American cities in thirty-three states, Puerto Rico, and Washington, D.C. (both Dulles and Reagan National airports); and to more than a dozen cities in four other countries

[4] Distances and other details obtained using Driving Directions on Google Maps, https://maps.google.com (last visited Feb. 28, 2022).

(Canada, Dominican Republic, Jamaica, and Mexico).[5]

Every single flight out of Midway crosses state lines; not one of the more than two hundred daily flights is intrastate. Therefore, an employee such as Respondent who is directly engaged in moving the baggage of these international and interstate travelers belongs to a "class of workers engaged in foreign or interstate commerce." Petitioner's proposed restriction of that phrase to only those transportation workers who themselves cross borders is absurd.

CONCLUSION

The judgment below should be affirmed.

ELLEN NOBLE
PUBLIC JUSTICE
1620 L STREET N.W.
Suite 630
Washington, DC 20036
(202) 797-8600

JOHN J. KORZEN
Counsel of Record
WAKE FOREST UNIVERSITY
SCHOOL OF LAW
APPELLATE ADVOCACY
CLINIC
Post Office Box 7206
Winston-Salem, NC 27109
(336) 758-5832
korzenjj@wfu.edu

MARCH 2022

Counsel for Amicus Curiae

[5] *Midway International Airport*, Wikipedia, https://en.wikipedia.org/wiki/Midway_International_Airport (last visited Feb. 27, 2022).