No. 22-327

In the Supreme Court of the United States

CONFEDERACIÓN HÍPICA DE PUERTO RICO, INC.;
CAMARERO RACETRACK CORP.,
Petitioners,

v.

CONFEDERACIÓN DE JINETES PUERTORRIQUEÑOS, INC., ET AL.,
Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

AXEL VIZCARRA-PELLOT
Vizcarra-Pellot Law Office
5900 Isla Verde Avenue
L2-362
Carolina, PR 00979

PETER JOHN PORRATA
Law Offices of Peter John Porrata
P.O. Box 3943
Guaynabo, PR 00970

DEEPAK GUPTA
Counsel of Record
ALISA TIWARI
Gupta Wessler PLLC
2001 K Street, NW
North Tower, Suite 850
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

Counsel for Respondents

December 12, 2022

QUESTION PRESENTED

In a case that otherwise raises a genuine dispute over wages or working conditions, are workers who are paid only for their own labor categorically ineligible for the antitrust labor exemption solely due to their status as independent contractors?

CORPORATE DISCLOSURE STATEMENT

No publicly held corporation owns 10% or more of any respondent's stock. Nor is any respondent a subsidiary of any parent company.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Legislative History

Other Authorities

INTRODUCTION

When a group of horse jockeys in Puerto Rico refused to race in protest of their low wages (one fifth of what their mainland counterparts receive), the racetrack and a group of horse owners mounted an extraordinary response: They sued the jockeys under the federal antitrust laws and got a court order forcing the jockeys to go back to work and to pay $1,190,685 in damages. On appeal, the First Circuit correctly held that this unusual lawsuit should have been dismissed under the antitrust laws' labor exemption because the dispute concerns wages for the jockeys' own labor, nothing more. App. 11a. The "district court erred when it concluded that the jockeys' alleged independent-contractor status categorically meant that they were ineligible for the exemption." App. 10a.

The racetrack and the owners now seek this Court's aid, claiming that this decision "worked a fundamental change in antitrust law," which "has been understood for nearly one hundred years to exclude independent contractors" from its labor exemption. Pet. 2. But nothing in the petition substantiates those sweeping claims. When it enacted the Clayton Act (in 1914) and the Norris-LaGuardia Act (in 1932), Congress used the same words—"terms and conditions of employment"—to refer to the subject matter of exempt labor disputes. Despite how these words may strike "lawyerly ears today," "most people then would have understood" them to reach "not only agreements between employers and employees but also agreements that require independent contractors to perform work." *New Prime Inc. v. Oliveira,* 139 S. Ct. 532, 539 (2019) (discussing the meaning of "contracts of employment" in 1925). The petition never confronts this original meaning, which is not contradicted by any of this Court's precedents.

The petitioners nevertheless assert a conflict with this Court's and other circuits' cases. But they are unable to identify *any* case holding that workers like the jockeys here—that is, workers who are paid only for their own personal labor, in a dispute over their wages—are ineligible for the labor exemption due solely to their independent-contractor status. The petition relies on cases involving two very different scenarios: disputes over sales of commodities, *see Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143 (1942), and disputes with businesses, like providers of professional services, with capital investments and employees of their own, *see United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. 485 (1950); *Am. Med. Ass'n v. United States*, 317 U.S. 519 (1943). This Court's cases concerning these scenarios don't turn on (or even discuss) the independent-contractor-employee distinction. And every circuit case cited in the petition (all from over four decades ago) involves these same scenarios. None involves workers paid only for their own labor.

Apart from the absence of a conflict, certiorari is unwarranted because the issue is neither important nor recurring and because this case is a poor vehicle. The petition hyperbolically speculates that the decision below could lead to "essentially unrestrained" antitrust conspiracies in the medical, trucking, legal, and real-estate industries. Pet. 27-28. But it is already well established by this Court's cases that the labor exemption doesn't apply to these sorts of businesses. In any event, this case—involving the low wages paid to 37 horse jockeys on an island with a single racetrack—would be a particularly odd vehicle to probe the outer edges of antitrust. It is unclear how blocking the jockeys' collective action in this isolated context would meaningfully further the policies of the federal antitrust laws, and the petition does not say.

STATEMENT

A. Statutory background

1. Although the Sherman Act of 1890 made no mention of workers, courts soon deemed their collective labor action to be "in restraint of trade" under the Act, 15 U.S.C. § 1, and often ordered strikers back to work. Letwin, *The First Decade of the Sherman Act: Early Administration*, 68 Yale L.J. 464, 475–85 (1959). These orders proved controversial and fueled labor unrest. During the Pullman Strike of 1894, the federal government obtained court orders barring thousands of railway workers from striking and ultimately deployed federal troops to subdue the many workers who refused to comply. *Id.* at 481–82.

2. When it enacted the next antitrust statute, the Clayton Act of 1914, Congress reacted by expressly carving out labor disputes. It did so by broadly declaring that "[t]he labor of a human being is not a commodity or article of commerce." 15 U.S.C. § 17. To make good on that declaration, Congress provided that "[n]othing contained in the antitrust laws shall be construed" to forbid labor organizations' operations, *id.*, and categorically barred federal courts from issuing injunctions in labor disputes. *See* 29 U.S.C. § 52 ("No restraining order or injunction shall be granted… in any case… involving, or growing out of, a dispute concerning terms or conditions of employment."). Congress also catalogued the specific activities it intended to protect, providing that no "injunction shall prohibit any person … from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do." *Id.* These activities may not be "held to be violations of any law of the United States." *Id.*

Despite this categorical language, the federal judiciary again invoked the antitrust laws to authorize sweeping

anti-strike injunctions, *see Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 470–72 (1921), issuing over two thousand such decrees during the 1920s, Forbath, *The Shaping of the American Labor Movement*, 102 Harv. L. Rev. 1109, 1227 (1989). This proliferation of injunctions prompted widespread chaos, as workers sought to disobey those injunctions and employers sought to enforce them. *Id.*

3. In 1932, when it enacted the Norris-LaGuardia Act, Congress took even greater pains to protect workers. "[T]he individual unorganized worker," Congress found, "is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment." 29 U.S.C. § 102. Congress deemed it "necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment." *Id.*

Because the courts had hindered that freedom with injunctions, Congress resorted to a drastic step: jurisdiction-stripping. "No court of the United States" has "jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute[.]" 29 U.S.C. § 101. Building on the Clayton Act, Congress reiterated that courts may not enjoin "persons" from "[c]easing or refusing to perform any work," but its list of protected acts also grew to include other organizing activities such as "[a]ssembling peaceably to act or to organize to act in promotion of [] interests in a labor dispute." 29 U.S.C. § 104. The Norris-LaGuardia Act makes clear what the term "labor dispute" "includes"—namely, "any controversy concerning terms or conditions of employment, or concerning the association or

representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113.

Both the Clayton Act (in 1914) and the Norris-LaGuardia Act (in 1932) use the same key phrase: "terms and conditions of employment." At the time that Congress enacted this legislation, "employment" was understood as more or less a synonym for work.[1] So, despite how the words may strike modern readers, they would have been understood at the time to refer to "not only agreements between employers and employees but also agreements that require independent contractors to perform work." *New Prime*, 139 S. Ct. at 540 (interpreting Congress's use of the phrase "contracts of employment" in the Federal Arbitration Act of 1925).

4. The same was initially true of another roughly contemporaneous statute, the National Labor Relations Act of 1935, which protects "concerted activities" by "employees." 29 U.S.C. § 157. In *NLRB v. Hearst Publications*, 322 U.S. 111, 127 (1944), this Court held that the NLRA's coverage of "[e]mployees" included independent contractors (in that case, newsboys in a labor dispute with a newspaper publisher). In 1947, however, Congress amended the NLRA to expressly exclude "independent

---

[1] Webster's defined "employment" as "[t]hat which engages or occupies; that which consumes time or attention; occupation; office or post of business; service; as, agricultural *employments*; public *employment*." *Webster's New International Dictionary* 718 (1st ed. 1930). Legal definitions were similar. *Black's Law Dictionary* 658 (3d ed. 1933) (defining "employment" as "[t]he act of hiring, implying a request and a contract for compensation").

contractors." 29 U.S.C. § 152(3). Congress never made such an amendment to the Clayton Act or the Norris-LaGuardia Act, or otherwise acted to limit the original reach of the antitrust laws' labor exemption.

B. Factual background

This case involves a dispute over pay and working conditions between jockeys in Puerto Rico and their labor association (the respondents), and a racetrack and an association representing the horse owners (the petitioners).

Horse racing in Puerto Rico takes place at a single racetrack in a small town on the northeastern edge of the island. App. 4a. Horse owners hire jockeys to ride their thoroughbreds in races that take place five days a week. App. 4a. These races generate hundreds of thousands of dollars in revenue from gambling, program sales, and food commissions—both for the owners and for the racetrack. *See, e.g.*, App. 44a, 61a-63a. The jockeys, by contrast, are paid only twenty dollars each time they race—a minimum wage, called a "mount fee," set by regulations adopted by the Puerto Rican government in 1989. App. 4a, 13a, 86a. Under those same regulations, jockeys who finish first through fifth in a race receive about ten percent of any prize money. App. 86a. Owners can increase jockeys' compensation above the floor established by the government. But, as a general matter, they don't. App. 13a, 86a.

Over the years, the jockeys have repeatedly complained about their pay and working conditions. Their main grievance has been their paltry rate of compensation—the jockeys' twenty-dollar payment is one-fifth of what their counterparts on the mainland United States receive. They have also complained about race procedures, including the pre-race weigh in process. App. 4a.

About six years ago, several jockeys delayed the start of a race in an effort to be heard. They were fined in response. The jockeys' labor association disputed the fines, and discussions evolved into a broader dispute about the jockeys' compensation. The labor association attempted to negotiate with the racetrack and the owners to raise the compensation rate. App. 4a–5a. The association made clear that it intended to organize a strike if the conflict could not be resolved, but no progress was made. App. 80a. As a result, 37 jockeys refused horse owners' hiring requests for three days of races the following week. The racetrack cancelled the races that were scheduled for those days, as the 37 jockeys' absence left nobody available to ride any of the registered horses. App. 80a.

C. Procedural background

1. The racetrack and the owners' association immediately filed suit in federal court, alleging that the jockeys' association and the individual jockeys had violated the antitrust laws by boycotting the races. They sought a temporary restraining order directing the individual jockeys to return to work. App. 5a. The following day, the district court held a hearing and granted the requested TRO. Dkt. 23. None of the individual jockeys were able to retain counsel in time, and the labor association's counsel was not registered to practice in the federal district court.

The district court then held a hearing on the request for a preliminary and permanent injunction. When the hearing concluded, the court entered the injunctions, enjoining the jockeys from refusing to work. It held that the jockeys are independent contractors, that they had restrained trade by boycotting the races, and that they could not benefit from the labor exemption to the antitrust laws because of their independent-contractor status. App. 72a–

96a. Proceeding to the damages stage, the district court granted summary judgment to the plaintiffs. It trebled losses from the cancelled races and awarded $602,466 in damages to the racetrack and $588,219 in damages to the horse owners. App. 48a–71a. The jockeys appealed.

2. The court of appeals reversed, concluding that this case falls within the antitrust laws' labor exemption. App. 10a. The court first explained why this dispute satisfies all the traditional hallmarks of a labor dispute—it involves a labor organization that "advocates for the jockeys' terms of employment," the jockeys "sought higher wages and safer working conditions," and they "acted to serve their own economic interests." App. 10a.

The court of appeals next held that "[t]he district court erred when it concluded that the jockeys' alleged independent-contractor status categorically meant they were ineligible for the exemption." App. 10a. The court explained that, in the context of this statutory scheme, precedent referring to "an employer-employee relationship" must be "broadly understood." App. 14a. Drawing on *Columbia River Packers Association v. Hinton*, 315 U.S. 143 (1942), the court determined that "[t]he key question," is "whether what is at issue is compensation for [the jockeys'] labor"—not their employment status under common law. App. 11a, 14a. It explained that disputes "over prices for goods"—like the fishermen's disputes over the price of fish in *Columbia River Packers*—do not fall within the exemption, while "disputes about wages for labor" do. App. 11a. And the dispute between the racetrack, owners, and jockeys was clearly about wages for workers' labor, because "it center[ed] on the compensation [paid to] the jockeys for their labor." App. 13a. Accordingly, the court

remanded the case to the district court with instructions to dismiss the complaint. App. 15a.

REASONS FOR DENYING THE WRIT

I. There is no conflict between the decision below and precedents of this Court and other circuits.

The petitioners claim that this case presents a "direct conflict" with decisions of this Court and other circuits. Pet. 8. But they cannot point to a single case, from this Court or from any court of appeals, holding that workers like the jockeys here—individuals who are paid only for their own labor, in a dispute over their wages—are ineligible for the labor exemption's protection solely because they may be classified as independent contractors.

Instead, the petition relies on cases involving very different scenarios: disputes over prices for the sale or lease of commodities; disputes involving businesses with their own capital investments and employees; or some combination of the two. Only by lumping all these scenarios together, and by quoting language out of context, is the petition able to present a superficial impression of a split. But this Court has repeatedly held that these scenarios fall outside the exemption for reasons that have nothing to do with the independent-contractor-employee distinction. And every one of the federal appellate precedents cited in the petition—from just four circuits, all from at least forty years ago—involve these same scenarios.

Without a case on point, the petitioners attempt to manufacture conflicts by assuming the conclusion they seek to vindicate. From its first sentence, the petition describes the decision below as holding that the labor exemption "covers disputes that involve only independent contractors and do not relate to the terms of or conditions

of any employee's employment." Pet. 1. But the question presented by the petition is *whether* the phrase "terms and conditions of employment"—as enacted by Congress in 1914 and 1932—would have been understood to reach independent contractors. Those "words generally should be interpreted as taking their ordinary meaning at the time" they were enacted. *New Prime*, 139 S. Ct. at 539. Because the petition does not address the original meaning of "employment" (or "employee" or "employer"), its repeated invocation of these words in the case law, standing alone, is question-begging rather than enlightening. *See*, *e.g.*, Pet. 8–17 (emphasizing "the employee-employer relationship"); Pet. 15 (discussing *Jacksonville Bulk Terminals v. Int'l Longshoremen's Ass'n*, 457 U.S. 702, 712–713 (1982)).

A. The decision below is consistent with this Court's precedent.

No precedent of this Court conflicts with decision below. To the contrary, the cases of this Court that the petition identifies as constituting a "direct conflict" (at 15) instead exemplify the materially different scenarios in which courts have found the labor exemption inapplicable.

The petition's lead case, *Columbia River Packers Association v. Hinton*, 315 U.S. 143 (1942), was "a dispute among businessmen"—between a group of fishermen and a fish distributor—"over the terms of a contract for the sale of fish." *Id.* at 145. The Court held that the labor exemption didn't apply because "the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours or other terms and conditions of employment." *Id.* at 147; *see id.* ("The controversy here is altogether between fish sellers and fish buyers."). The fishermen were "independent businessmen," but nothing in the

decision turned on a common-law distinction between independent contractors and employees—a distinction the Court did not discuss. *Id.* Instead, the fishermen fell outside the exemption because they were not selling their labor; they were "an association of commodity sellers." *Id.* at 145 n.3; *see id.* at 145 ("The [Norris-LaGuardia] Act was not intended to have application to disputes over the sales of commodities."); *see also L.A. Meat & Provision Drivers Union, Loc. 626 v. United States*, 371 U.S. 94, 102 (1962) (holding that the labor exemption did not apply because, "[h]ere, as in *Columbia River Assn.*, the grease peddlers were sellers of commodities").

The petitioners' two remaining cases—*United States v. National Association of Real Estate Boards*, 339 U.S. 485 (1950), and *American Medical Association v. United States*, 317 U.S. 519 (1943)—illustrate the other common scenario. The first involved a board of real-estate entities—banks, employers, and an assortment of other businesses—that fixed prices on their commissions. The second involved a group of independent medical practices that attempted to destroy a healthcare corporation by preventing doctors from working there. The petitioners assert (at 16–17) that each case turns on the various entities' status as independent contractors. But neither the term "independent contractor" nor its common-law definition is discussed in either case. Instead, the Court held that these sophisticated, professional business enterprises were not the disempowered laborers envisioned by the Clayton and Norris-LaGuardia Acts. In *National Association of Real Estate Boards*, for example, the Court described them as "entrepreneurs," including "banks or corporations," with "large staffs." *Nat'l Ass'n of Real Est. Bds.*, 339 U.S. at 490; *Am. Med. Ass'n*, 317 U.S. at 529 (emphasizing the "size and importance of the [medical practices]"); *see also*

United States v. Women's Sportswear Mfg. Ass'n, 336 U.S. 460, 463–64 (1949) ("The stitching contractor, although he furnishes chiefly labor, also utilizes the labor through machines and has his rentals, capital costs, overhead and profits. He is an entrepreneur, not a laborer."). Neither case remotely suggested that this reasoning could extend to individual laborers paid for their own manual labor.[2]

B. The decision below is consistent with cases from other circuits.

The court of appeals cases cited by the petition as evidence of a split all present the scenarios discussed above. The petition's lead circuit case, *Taylor v. Local No. 7, International Union of Journeymen Horseshoers of United States & Canada (AFL-CIO)*, 353 F.2d 593 (4th Cir. 1965), illustrates a mix of both scenarios: independent businesses, with their own employees and capital investments, that sell services and commodities to others for profit.

The petition contends (at 9) that *Taylor* "arose in a factual context very similar to that at issue here" because both cases involve horse-racing tracks. But the similarities end there. The defendants in *Taylor* were farriers

---

[2] The petition also fails to discuss the cases in which this Court held or stated that independent contractors enjoy the protection of the labor exemption. *See Am. Fed'n of Musicians of U.S. & Can. v. Carroll*, 391 U.S. 99, 112 (1968); *H. A. Artists & Assocs., Inc. v. Actors' Equity Ass'n*, 451 U.S. 704, 721 (1981); *see also Milk Wagon Drivers' Union, Loc. No. 753, Int'l Bhd. of Teamsters, Chauffeurs, Stablemen & Helpers of Am. v. Lake Valley Farm Prods.*, 311 U.S. 91, 98 (1940) (referring to independent-contractor vendors as "employees" with "conditions or terms of employment"); *L.A. Meat & Provision Drivers*, 371 U.S. at 105–07 (Goldberg, J., concurring); *New Negro All. v. Sanitary Grocery Co.*, 303 U.S. 552 (1938).

(horseshoers) who were "independent businessmen" with "their own tools," "printed billboards," "individual business billheads," and even the "employment of [their own] apprentices." *Id.* at 599–600. In addition to their capital investments in tools, advertising, and their own employees, the farriers "manufactuer[ed] various types of steel shoes in volume for later sales to trainers." *Id.* at 599. These sales "could result in profit or loss," "and in this respect they r[a]n the same risk as any manufacturer." *Id.* The farriers were also regarded as "highly skilled" "specialists, similar to veterinarians." *Id.* at 599–600.

Taylor was therefore entirely unlike this case. It did not involve laborers paid only for their own work, in a dispute over wages. Instead, the farriers were running small businesses, with their own employees, and selling commodities. And although *Taylor* discussed the farriers' independent-contractor status at some length, the case doesn't stand for the categorical rule that the petitioners urge. Its holding rested on an intensely factbound analysis concluding that the farriers were "independent businessmen, specialists in their line, who have banded together" to engage in "price-fixing activities." *Id.* at 605–06.

The petition next tries to frame *Conley Motor Express v. Russell*, 500 F.2d 124 (3d Cir. 1974), as a case about "driving services" rather than commodities. But the defendants there were members of the Fraternal Association of Special Haulers (FASH), a trade association of "owner-operators of trucks[,] which they lease[d] to Conley Motor Express." *Id.* at 125. Just four years earlier, the Third Circuit had extensively analyzed FASH, explaining it was a "businessman's organization" that represented "fleet owners." *U.S. Steel Corp. v. Fraternal Ass'n of Steelhaulers*, 431 F.2d 1046, 1047–49 (3d Cir. 1970). The

court observed that "one of the prime motivations for FASH's activities" was not "the preservation of a driver's wage" but instead "the owner's demand for a more profitable operation of his equipment." *Id.* at 1050. "This unmistakable concern with a return on capital investment," the court explained, "lends a distinct non-labor character to FASH's operations." *Id.* Given this recent history, the Third Circuit had little trouble concluding that the fleet owners' dispute with Conley over the term of their truck-leasing arrangements was not "a dispute concerning terms or conditions of employment." *Conley*, 500 F.2d at 126.[3]

The petition next cites *International Association of Heat & Frost Insulators & Asbestos Workers v. United Contractors Association, Inc. of Pittsburgh*, 483 F.2d 384 (3d Cir. 1973), for the proposition that there is no distinction between the sale of labor and the sale of commodities for purposes of the labor exemption. But that case simply held that a group of employer-contractors in the construction industry who had fixed the price for the labor of *their employees* (not their own labor) could be held liable under the antitrust laws, even though they "would not be directly setting prices on commodities in the usual sense as the gravamen of the conspiracy." *Id.* at 392.

The petition's remaining cases, from the Ninth and Second Circuits, also involve sales of goods rather than wages for labor. The petition contends that the Ninth Circuit held in *Local 36 of International Fishermen & Allied*

---

[3] The Sixth Circuit's unpublished decision in *Armco Steel Co. v. Tackett, L.P.*, 1991 WL 21973, at *1 (6th Cir. Feb. 21, 1991) also involved "independent owner-operators" of trucks, who leased their trucks to common carriers and wanted higher returns on their investment.

Workers of America v. United States, 177 F.2d 320 (9th Cir. 1949), that a labor dispute did not exist because the individuals involved were independent contractors. But nowhere does the case say that. Like *Hinton*, the case involved fishermen who set the price of the fish that they caught and sold to dealers. The Ninth Circuit upheld the trial court's jury instruction that there could be no labor dispute if the "controversy is solely one over the price at which the [fishermen] shall sell their fish." *Id.* at 336. Likewise, *Ring v. Spina*, 148 F.2d 647 (2d Cir. 1945), involved a group of playwrights who conspired to fix the price of plays they sold or leased to producers. The court explained that "[t]he minimum price and royalties provided by the [price-fixing agreement], unlike minimum wages in a collective bargaining agreement, are not remuneration for continued services, but are the terms at which a finished product or certain rights therein may be sold." *Id.* at 652. Because the playwright's "relation with his producer" turned on the sales of a commodity ("a book or play"), not his own labor, he did not qualify for the exemption. *Id.*

In sum, the petition does not cite a single case, over the century-long history of the antitrust labor exemption, holding that workers paid only for their own labor are ineligible for the labor exemption's protection solely because they are independent contractors.

II. The question presented is neither important nor recurring, and this case would be an especially poor vehicle to address it.

Although this case concededly "involves a small number of jockeys at a small race track in Puerto Rico," the petition attempts to amplify its importance by speculating that the reach of the decision below might be expanded, by future courts, beyond the context of laborers in wage

disputes. Pet. 26. The petition confidently predicts that the decision below will permit a broad range of actors—in the medical, trucking, legal, or real-estate industries—to "engage in collective activity regarding their compensation" that is "essentially unrestrained." Pet. 28.

But, again, the First Circuit's decision applies only to laborers paid solely for their own labor—workers who have already enjoyed the protection of the labor exemption for the past century. Under this Court's precedent (and that of the First Circuit, for that matter), it is already well established that the labor exemption does *not* apply to sophisticated businesses or entrepreneurs with significant capital investments or employees of their own, such as independent doctors or real-estate professionals. *See, e.g.*, *Am. Medical Ass'n*, 317 U.S. at 519 (medical services); *Nat'l Ass'n of Real Estate Bds.*, 339 U.S. at 485 (real-estate services); *see* Estlund & Liebman, *Collective Bargaining Beyond Employment in the United States*, 42 Comp. Lab. L. & Pol'y J. 371, 380 (2021) ("The critical question in defining the scope of the statutory labor exemption from antitrust law is… whether individuals are primarily selling their own labor as opposed to selling goods or services produced with significant capital inputs or the labor of others."). The petition's extensive speculation about collusion in the professional-services industries (at 28–31) is thus unfounded.

The petitioners also make little effort to show that the question presented is a recurring one. While the petition points out that the number of independent contractors has risen in recent years, it identifies no other cases addressing the organizing efforts of independent contractors within the past four decades. Instead, it relies on inapposite cases from the middle of the 20th century.

If the petition's speculation ever materializes, in either professional-services or "gig" economy contexts, this Court will be able to address the question in the legal and factual context in which it arises. But this case—involving 37 jockeys paid the minimum wage by the only racetrack on an island—is an especially poor vehicle. The jockeys are price takers with stagnant wages. Their twenty-dollar mount fee is already the minimum payment permissible under local regulations. It is hard to see how suppressing the jockeys' collective action would meaningfully further the policies of the antitrust laws.

If this Court wishes to clarify the labor exemption's application to independent contractors, it should allow the issue to percolate in the courts and wait for a case where the stakes arguably include benefits from a fluid market with robust competition. The Sherman and Clayton Acts are based on the premise that competition is good. Only when actors in a market would be freely competing if not for their collective action—such as sellers of commodities or professional-services businesses—has this Court historically stepped in to hold, in line with Congress's design, that those actors cannot hide behind the labor exemption.

In addition to percolation in the courts, the issue may benefit from further development in the political branches and the expert agencies entrusted by Congress with antitrust enforcement. Contrary to the petitioners' contentions (at 22), the federal government has not taken the position that disputes involving independent contractors fall categorically outside the labor exemption, and the responsible agencies have indicated that they have just begun to

study the issue.[4] In the absence of a case involving genuine competition issues—and in the absence of further developments in the courts or the agencies—it would be premature for this Court to weigh in.

III. The decision below is correct.

The decision below correctly holds that, in a case that otherwise raises a genuine labor dispute, workers may not be deemed categorically ineligible for the labor exemption solely by virtue of their independent-contractor status.

1. Both the Clayton Act of 1914 and the Norris-LaGuardia Act of 1932 prohibit injunctions in disputes concerning "terms or conditions of employment." 29 U.S.C. § 52; 29 U.S.C. § 113. Those words "should be interpreted as taking their ordinary meaning at the time Congress enacted the statute[s]." *New Prime*, 139 S. Ct. at 539. At the time that these statutes were enacted, "employment" generally meant work—including that of independent contractors. In 1925, roughly the midpoint between the two enactments, "the dictionaries of the era consistently afforded the word 'employment' a broad construction" and "tended to treat 'employment'" more or

[4] The FTC brief cited by the petition (at 22) states on the first page: "We express no view on any other issue in this case beyond the proper application of the state action doctrine." Amicus Br. for U.S. and FTC at 1–2, *Chamber of Commerce v. Seattle*, No. 17-35640 (9th Cir. Nov. 3, 2017). And the DOJ brief encourages the NLRB to clarify its approach to worker classification, citing the dangers of misclassification. *See* Amicus Br. of U.S. Dep't of Just., *Atlanta Opera, Inc.*, No. 10-RC-27692 (NLRB Feb. 10, 2022). Federal regulators, both at the FTC and at DOJ, are currently developing positions on this issue, in consultation with Congress—yet another reason for the Court to stay its hand. *See, e.g.*, Letter from FTC Chair Lina M. Khan to Chair Cicilline & Ranking Member Buck (Sept. 28, 2021), https://perma.cc/PP8S-NM3Q.

less as a synonym for 'work.'" *Id.* They did not "distinguish between different kinds of work or workers: All work was treated as employment, whether or not the common law criteria for a master-servant relationship happened to be satisfied." *Id.* And federal and state legal authorities from the early twentieth century confirm that broad understanding of "employment," as do federal and state statutes. *Id.* at 540.

That understanding of "employment" was no different in 1914, when Congress enacted the Clayton Act. *See, e.g.*, *A New English Dictionary on Historical Principles* 130 (1891) (defining "employment" as, among other things, "[t]he action or process of employing; the state of being employed. The service (of a person). That on which (one) is employed; business; occupation; a special errand or commission. A person's regular occupation or business; a trade or profession"); *Webster's New International Dictionary* 718 (1st ed. 1930) (listing "[w]ork" as a synonym for "employment"); *Webster's Collegiate Dictionary* 329 (3d ed. 1916) (same); *Black's Law Dictionary* 422 (2d ed. 1910) ("an engagement or rendering services" for oneself or another); 3 *The Century Dictionary and Cyclopedia* 1904 (1901) (defining "employment" as "[w]ork or business of any kind").

Nor was it different in 1932, when Congress enacted the Norris-LaGuardia Act. 3 *Oxford English Dictionary* 130 (1933) (defining "employment" as "[t]hat on which (one) is employed; business; occupation; a special errand or commission"); *Webster's New International Dictionary* 718 (1st ed. 1930) (defining "employment" as, among other things, "That which engages or occupies; that which consumes time or attention; occupation; office or post of business; service; as, agricultural *employments*; public

employment"); *Black's Law Dictionary* 658 (3d ed. 1933) (defining employment to include "an engagement or rendering services for another" and "[t]he act of hiring, implying a request and a contract for compensation"); *The Cyclopedic Law Dictionary* 381 (3d ed. 1940) (defining "employment" as "[a] business or vocation"; "[t]he service of another"; "calling; office; service; commission[;] trade; profession"; and "the act of employing, in another sense, the state of being employed").

Thus, despite how the statutes' words may sound to "lawyerly ears today," "most people then would have understood" them to reach "not only agreements between employers and employees but also agreements that require independent contractors to perform work." *New Prime*, 139 S. Ct. at 539 (discussing the meaning of the phrase "contracts of employment" in the Federal Arbitration Act of 1925). By its plain terms, then, the labor exemption covers all disputes concerning laborers' working conditions—including those of independent contractors. The petitioners offer no reason "to depart from the original meaning of the statute[s] at hand." *Id.*

2. This conclusion is buttressed by context, history, and surrounding statutory text. After the Sherman Act became a tool for suppressing worker collective action, Congress enacted the Clayton Act, which declares that that "[t]he labor of a human being is not a commodity or article of commerce." 15 U.S.C. § 17. The Act prohibits injunctions "in any case … involving, or growing out of, a dispute concerning terms or conditions of employment." 29 U.S.C. § 52. And the second clause—seemingly independently—dictates that the antitrust laws may not, for instance, "prohibit any person or persons, whether singly or in concert, from terminating any relation of

employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do." *Id.*

When the Clayton Act's power was whittled down by courts, Congress deployed the Norris-LaGuardia Act to restore it. The Norris-LaGuardia Act further narrows the circumstances under which the federal courts can grant injunctions in labor disputes. And it makes clear that a "labor dispute" includes "any controversy concerning terms or conditions of employment." 29 U.S.C. § 113. In doing so, the Norris-LaGuardia Act explicitly formulated the "public policy of the United States" to protect "the individual unorganized worker [who] is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor." 29 U.S.C. § 102.

The Acts' broad language indicates that the rights Congress intended to protect are far-reaching—they are the rights of laboring workers concerned about their wages and working conditions. *Hunt v. Crumboch*, 325 U.S. 821, 824 (1945) ("It is not a violation of the Sherman Act for laborers in combination to refuse to work. They can sell or not sell their labor as they please."). This is confirmed by the relevant committee reports, which demonstrate that Congress contemplated disputes involving workingmen, wage earners, and laborers. *See, e.g.*, H.R. Rep. No. 62-612, at 10 (1912) (explaining that the Clayton Act was passed so "that workingmen may lawfully combine to further their material interests without limit or constraint"); S. Rep. No. 72-163, at 9 (1932): ("The right of wage earners to organize and to act jointly in questions affecting wages, conditions of labor, and the welfare of labor generally is conceded and recognized by all students of the subject.").

If Congress originally meant for the labor exemption to have a narrower scope, or if it later changed its mind, it could have said so. That is what happened with the NLRA. After this Court interpreted "employees" under the NLRA to include independent contractors in *NLRB v. Hearst Publications*, 322 U.S. 111, 127–32 (1944), Congress responded by expressly excluding "independent contractors." 29 U.S.C. § 152(3). If Congress wanted to ensure similarly narrow coverage for the labor exemption, it could have amended the Clayton Act or Norris-LaGuardia Act. But it did not, further reinforcing that Congress's concern was with the rights of disempowered workers striving to improve their wages or working conditions—regardless of their status under the common law.

3. This dispute between jockeys, horse owners, and a racetrack falls comfortably within the labor exemption. It is concededly a dispute about workers' wages and working conditions. The jockeys are workers—their job consists of manual labor (riding a horse), without any significant capital investment or employees. And the dispute began when several jockeys delayed a race because they wanted to discuss pre-race weigh-in procedures. The dispute then evolved into a disagreement that included the jockeys' compensation for each race. That paltry payment is generally the same for all jockeys (twenty dollars), and it has remained static for thirty years, suggesting a lack of bargaining power when it comes to compensation. The Clayton and Norris-LaGuardia Acts were enacted to protect individuals exactly like these jockeys—workingmen who are helpless without organized action to improve their conditions of employment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DEEPAK GUPTA
Counsel of Record
ALISA TIWARI
Gupta Wessler PLLC
2001 K Street, NW
North Tower, Suite 850
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

AXEL VIZCARRA-PELLOT
Vizcarra-Pellot Law Office
5900 Isla Verde Avenue
L2-362
Carolina, PR 00979

PETER JOHN PORRATA
Law Offices of Peter John Porrata
P.O. Box 3943
Guaynabo, PR 00970

Counsel for Respondents

December 12, 2022