

No. 23-424

In the Supreme Court of the United States

AMAZON.COM, INC., ET AL.,

Petitioners,

v.

JENNIFER MILLER, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

	Page
Supplemental brief for the petitioners.....	1
Conclusion.....	4

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Bissonnette v. LePage Bakeries Park St., LLC</i> , 601 U.S. ____ (2024)	1-3
<i>Carmona v. Domino’s Pizza, LLC</i> , 73 F.4th 1135 (9th Cir. 2023)	2
<i>Ortiz v. Randstad Inhouse Servs., LLC</i> , 95 F.4th 1152 (9th Cir. 2024)	2-3
<i>Sw. Airlines Co. v. Saxon</i> , 596 U.S. 450 (2022).....	1-2
STATUTES	
9 U.S.C. 1	1
RULES	
SUP. CT. R. 15.8.....	1

**SUPPLEMENTAL BRIEF
FOR THE PETITIONERS**

Petitioners respectfully submit this supplemental brief under this Court’s Rule 15.8. In the petition, petitioners requested as alternative relief that the Court hold the petition until the disposition of *Bissonnette v. LePage Bakeries Park St., LLC*, No. 23-51. Pet. 28 n.3. The Court has now decided *Bissonnette*. But it did not decide the question here—whether local delivery of items already present within a state qualifies as being engaged in interstate commerce under 9 U.S.C. 1. See *Bissonnette*, 601 U.S. ___ (2024), slip op. at 5 n.2, 9. There remains an entrenched circuit split on that important and recurring issue. This is an ideal vehicle to resolve it. The Court should now grant the petition and do so.

The key statute in *Bissonnette*, as here, is the Federal Arbitration Act (FAA) exemption for “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” 9 U.S.C. 1. The Court addressed whether this exemption applies only to workers who “work for a company in the transportation industry.” 601 U.S. ___, slip op. at 5. It rejected that transportation-industry requirement and left the defendants’ alternative arguments for remand. *Id.* at 5 n.2, 9.

In doing so, the Court reaffirmed its instruction in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022), to focus on the work the workers perform rather than the business for which they perform it. 601 U.S. ___, slip op. at 6-7. The Court also reiterated that *Saxon*’s framework limits the exemption to workers who are

actively engaged in transportation of goods across borders via the channels of foreign or interstate commerce, confining the exemption to an appropriately narrow scope. *Id.* at 9.

The Ninth Circuit did not adhere to those principles in this case. See Pet. 19-22; Reply 6-8. Thus, it would certainly be appropriate, at a minimum, to vacate and remand the case for reconsideration in light of the Court’s latest reaffirmation of those principles.

But the Ninth Circuit has already considered *Saxon*’s articulation of the same principles. And it stated that it will not change its mind without more direct guidance from this Court. After *Saxon*, the Ninth Circuit refused to reconsider whether in-state deliveries trigger the FAA exemption because “*Saxon* expressly declined to address” that issue. *Carmona v. Domino’s Pizza, LLC*, 73 F.4th 1135, 1137 (9th Cir. 2023) (holding that truck drivers who transport supplies from warehouses to pizza franchisees are exempt from the FAA); see also Pet. App. 3a (citing *Carmona*, 73 F.4th 1135). *Bissonnette* declined to address the issue, too, and so there is slim hope that a simple remand would yield a different outcome.

The Court should therefore grant the petition and set this case for plenary review. The circuits are deeply split on the question presented. Pet. 13-18; Reply 3-6. Just last month, the Ninth Circuit again observed that this question has “not yet been settled by the Supreme Court, and the courts of appeals have reached different conclusions” about local delivery drivers. *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152, 1161 (9th Cir. 2024) (recognizing the split between Ninth Circuit precedent and that of the Fifth

and Eleventh Circuits). (In *Ortiz*, the Ninth Circuit held that moving packages within a warehouse can trigger the FAA exemption, making an analogy to the Pony Express, but even it acknowledged that “last-mile delivery” poses “thorny questions.” *Id.* at 1161-1162.)

The question presented is undoubtedly important. See Pet. 24-27; Reply 10-11. Even in *Bissonnette*, where the question was not presented, it garnered significant attention at oral argument from several Members of the Court and both advocates. Tr. at 5-6, 39-40, 45-49, 53-54, *Bissonnette*, *supra* (No. 23-51).

Bissonnette reaffirmed, moreover, that “uncertainty” over the scope of the exemption—and the litigation that results—undermines the FAA. 601 U.S. ___, slip op. at 7 (citation omitted). There is no reason to tolerate still further litigation in the lower courts over this question. Many circuits have addressed it, often in cases involving petitioners themselves. But division, not consensus, has emerged. Only this Court can bring uniformity and predictability, and this case is an ideal vehicle to do so. See Pet. 27; Reply 10-11.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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