No. 24-935

In the
Supreme Court of the United States

FLOWER FOODS, INC., ET AL.

Petitioners,

v.

ANGELO BROCK

Respondent.

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

BRIEF OF THE DRI CENTER FOR LAW AND PUBLIC POLICY AND ATLANTIC LEGAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE* [1]

The DRI Center for Law and Public Policy is the public policy arm of DRI, an international organization of approximately 14,000 civil defense attorneys and in-house counsel. DRI's mission includes promoting fairness, consistency, and predictability in the civil justice system. The Center regularly participates as *amicus curiae* in cases that affect the civil defense bar and the business community, including cases involving the Federal Arbitration Act ("FAA"). DRI's members frequently advise clients on the use and enforcement of arbitration agreements and have a strong interest in uniform and proper enforcement of the FAA.

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully

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[1] Petitioners' and Respondents' counsel were provided timely notice in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party or counsel other than the *amici curiae* and their counsel made a monetary contribution intended to fund preparation or submission of this brief.

selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. This includes ALF's longtime advocacy for the primacy of the FAA. *See* atlanticlegal.org.

Amici and their members and supporters have a strong interest in the question presented: the proper scope and contours of the FAA's 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. That phrase's meaning—what it means to be "engaged in commerce"—has generated inconsistent decisions across the circuits and remains unsettled despite this Court's recent guidance. *Amici* urge the Court to grant certiorari to resolve that conflict and enforce the correct, historically grounded interpretation.

SUMMARY OF ARGUMENT

All employment contracts affecting interstate commerce are subject to binding arbitration under Section 2 of the FAA. 9 U.S.C. § 2. This case is about the contours of the exemption to this broad rule.

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. In *Bissonnette v. LePage Bakeries Park St., L.L.C.*, the Court held that the § 1 exemption is defined by the job and work an employee does. *Bissonnette v. LePage Bakeries Park St., L.L.C.,* 601 U.S. 246, 252 (2024) (rejecting industry-based interpretation). A worker is exempt if he actively and directly transports goods or passengers in interstate

commerce like railroaders and sailors do. The industry of his employer's business is irrelevant. *Id.*

Section 1 specifically enumerates "seamen" and "railroad employees" which exemplify workers "connected by what they do, not for whom they do it." *Bissonnette,* 601 U.S. at 255. *Bissonnette* reversed the lower court which had incorrectly imposed an extra-textual "transportation industry" rule. The scope of § 1 is delimited by the worker's conduct, not by the employer's business, industry, or sector.

Bissonnette did not decide what it means to be "engaged in commerce" for purposes of § 1 and the residual clause. *Bissonnette*, 601 U.S. at 252, n.2. Are workers who operate only locally—for example, last-mile delivery drivers whose routes are entirely in one state—exempt simply because they happen to handle goods that crossed state or foreign borders at any time?

This precise question is squarely presented here: is the § 1 exemption from arbitration limited two workers who actually, as in personally, transgresses state or national borders while performing job responsibilities constituting transportation? Or do purely local workers, who simply handle goods that came from out of state, qualify as exempt? This is an important question and the stakes are high. Any misinterpretation of § 1 negates the enforceability of innumerable arbitration agreements currently in effect in the transportation and logistics sectors, including in the modern gig economy. Resolving this dispute will provide much-needed certainty to businesses and workers who need to know where § 1's exemption to the arbitration mandate begins and ends.

This Court should grant certiorari to answer with a resounding "no": Purely intrastate transportation workers are not exempt under § 1 and they must arbitrate under the FAA. This case is an ideal vehicle to define the scope of § 1. It cleanly presents the unresolved question of how to interpret "any other class of workers engaged in commerce" considering the FAA's text and meaning, against a factual backdrop that highlights the issue.

Amici take no position on the ultimate outcome for the particular workers here; our concern is solely with ensuring a correct and uniform legal test. Every unwarranted expansion of § 1's exemption undermines Congress's goal of a uniform policy of enforcing arbitration agreements nationwide and invites the very inconsistencies the FAA was enacted to avert. Granting certiorari will protect the historical fidelity of the FAA and provide much-needed certainty to American employers and workers in virtually every sector who are parties to arbitration agreements.

ARGUMENT

I. FAA's § 1 exemption must be interpreted consistently with its original meaning, which is limited to transportation workers like seamen and railroad employees.

A. The text and structure of § 1 establish a narrow exemption for those workers who directly and actively transport goods and people across state lines.

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. This exemption focuses on "what the employee does" and "the performance of work, rather than the industry of the employer." *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 456 (2022).

By its terms, § 1 has two discrete features that cabin its scope. First, it applies to "contracts of employment", which includes both independent contractors and employees. *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 110–12 (2019) (discussing understanding and meaning of "contracts of employment" in 1925 when the FAA was enacted).

Second, it is confined to specific categories: "seamen," "railroad employees," and the residual category "any other class of workers engaged in foreign or interstate commerce." The residual phrase does not stand alone; it follows two concrete examples; it is thus read *ejusdem generis* to embrace only similar kinds of workers. It does not exempt all employment contracts. Rather, it "confine[s] the exemption to transportation workers." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 109 (2001).

The words "engaged in commerce" in the residual clause of § 1 had a settled, narrow meaning in 1925 when Congress passed the FAA. *Id.* at 117-18 ("To say that the statutory words 'engaged in commerce' are subject to variable interpretations depending upon the date of adoption, even a date before the phrase became a term of art, ignores the reason why the formulation became a term of art in the first place: The plain meaning of the words 'engaged in commerce' is narrower than the more open-ended formulations 'affecting commerce' and 'involving commerce.'").

Engaged in commerce meant actually and directly working in—i.e., doing—interstate commerce; it did not mean attenuated conduct merely indirectly or consequently affecting commerce. *Bissonnette*, 601 U.S. at 256 (defining a "transportation worker" as one "actively engaged in transportation of … goods across borders via the channels of … interstate commerce" and having "a direct and necessary role in the free flow of goods across borders.").

Section 2 of the FAA has broader language to define the general rule of arbitration enforcement. This dichotomy illustrates § 1's narrower scope. All written arbitration agreements in *contracts "involving commerce"* are enforceable. 9 U.S.C. § 2. This language extends the FAA to the full breadth of Congress's allowed commerce power. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 273–74 (1995) (holding that "involving" commerce "is indeed the functional equivalent of 'affecting.'"). But § 1's more limited phrasing "engaged in commerce" restricts the exemption's reach. It "denotes only persons or activities within the flow of interstate commerce—the practical, economic continuity in the generation of goods and services for interstate markets." *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974).

By using narrower language in § 1—alongside specific categories of maritime and railroad workers—Congress confirmed that only classes of workers whose jobs require them to actively and directly move goods or passengers cross-border, doing so in the manner of sailors and railroad crews, are exempt. Congress did not intend to exempt all in-state workers whose jobs require them to locally move or handle

goods that happened to have moved through interstate commerce channels before arriving locally.

The Tenth Circuit's decision below exemplifies a drift away from this original understanding. In holding that a local baked-goods distributor is a worker "engaged in interstate commerce" exempt from the FAA, the court applied an overbroad interpretation that blurs the line Congress drew.

Respondent himself works entirely within one State, delivering products on local routes. His work crosses no borders. The Tenth Circuit deemed him exempt just because those products originated out of state and passed through a supply chain. But most goods American consumers buy locally are made somewhere else. Does that mean all local, single state drivers are exempt, and are actively and directly engaged in interstate commerce, just because the goods have crossed a border at some point? The answer is no. That is not the law. Such a reading improperly stretches § 1 beyond its text and intent, sweeping into the exemption myriad workers far removed from *seamen* and *railroad employees*.

B. The public meaning in 1925 was focused on traditional transportation workers.

The exemption's limited scope makes sense against the legal and practical backdrop in 1925. Congress was keenly aware of established dispute-resolution regimes for certain transportation workers—like railroaders and sailors. It drafted § 1 to avoid disrupting such specialized schemes.

As *Circuit City* recounts, by the time the FAA was enacted, Congress had already provided statutory arbitration or grievance procedures for seamen and

for railroad employees, largely in response to organized labor movements in both industries. *Bissonnette*, 601 U.S. at 253 (citing Shipping Commissioners' Act of June 7, 1872, ch. 322, 17 Stat. 262, Mar. 3, 1911; Transportation Act of 1920, § 300, *et seq*., 41 Stat. 469). Labor disputes in the railroad industry were common when the FAA became law. It was in response to those labor disputes that Congress enacted the Railway Labor Act, ch. 347, § 1, 44 Stat. 577 (May 20, 1926). Likewise, maritime labor protests were also common.[2] Admiralty law routinely subjected sailors to arbitration clauses.[3] Sailors' highly organized unions and lobbyists worked to procure substantive protections in federal labor laws.[4]

History shows that Congress excluded "seamen" and "railroad employees" from the FAA so as to not unsettle the established (and soon-to-be-established) dispute-resolution frameworks governing those workers. It also shows that Congress targeted the analogous workers as seamen and railroaders: those involved in transporting goods or passengers through interstate and foreign commerce. Indeed, Congress kept with that approach in 1936 when it extended the Railway Labor Act to airline employees—i.e.,

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[2] Ahmed A. White, "Mutiny, Shipboard Strikes, and the Supreme Court's Subversion of New Deal Labor Law," 25 BERKELEY J. EMP. & LAB. L. 275, 299–301 (2004).

[3] Matthew W. Finkin, "Workers' Contracts under the United States Arbitration Act: An Essay in Historical Clarification," 17 BERKELEY J. EMP. & LAB. L. 282, 286 (1996).

[4] *See id.* at 305.

transportation-sector workers akin to railroaders and mariners subject to specific laws outside the FAA.[5]

Contemporaneous early 20th-century laws confirm this interpretation. The original Federal Employers' Liability Act (FELA), before its amendment, applied to railroad employees "engaged in commerce," which courts interpreted to mean workers actually involved in interstate transportation—excluding railroad workers engaged in intrastate operations or other activities not closely related to moving interstate trains. *See Circuit City*, 532 U.S. at 116. And that is why Congress chose to amend FELA: to broaden FELA's coverage, because "engaged in commerce" was too constricted, evincing the term's limited scope.[6]

Likewise, the Clayton Antitrust Act of 1914 used "engaged in commerce" to define certain jurisdictional thresholds, and this Court held that the phrase meant being in the flow of interstate commerce, not merely affecting commerce. *See id.* at 117; *Gulf Oil*, 419 U.S. at 195.[7] Congress was familiar with these usages. By employing the same phrase in § 1, it intended a similarly limited focus for the FAA's exemption.

The differentiation between workers in transportation also stems from the fact that there were only so many workers who, consistent with this original understanding, would have been viewed in 1925 as "engaged in foreign or interstate commerce."

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[5] Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. 181–188 (1946).

[6] *Cf.* FELA of June 11, 1906, ch. 3073, 34 Stat. 232; and as amended, April 22, 1908, ch. 149, 35 Stat. 65.

[7] Clayton Antitrust Act of 1914. Pub.L. 63–212, 38 Stat. 730, codified at 15 U.S.C. §§ 12–27, 29 U.S.C. §§ 52–53.

Those workers operated trains and ships, and to an extent, loaded and unloaded cargo in interstate transit. Some were America's first long-haul drivers who drove a newfangled contraption—a "truck"—on America's original interstate roads. But American roads, as of 1925, were just barely being cut and put on the map. The few interstate roads in use were nothing more than wagon wheel tracks. They were rugged, largely unmaintained, and often impassable. In 1925 when Congress passed the FAA, mud trails (roads) and nascent trucks were not (yet) the workhorses of interstate and foreign transportation.[8]

It is axiomatic that a worker whose job is to physically move goods or passengers across state lines (or to load or unload vehicles as part of such interstate movement) naturally can be understood to fall within the § 1 exemption. *See Saxon*, 596 U.S. at 462–63 (airline cargo loaders "perform 'activities within the flow of interstate commerce'" when handling goods during local phase of interstate transportation).

But workers whose connection to interstate commerce is indirect—those who are not themselves part of the transportation process—were not considered "engaged in commerce" in the present sense. A factory employee who manufactures goods that later cross state lines, and a retail clerk selling imported products, would not in 1925 parlance and understanding, be "engaged in interstate commerce".

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[8] *See* Brief of The DRI Center for Law & Public Policy and Atlantic Legal Foundation as Amici Curiae in Support of Respondents filed in *Bissonnette v. LePage Bakeries Park St., L.L.C., case no. No. 23-51,* available at https://bit.ly/4iNDIh1

The FAA's framers never sought to exempt such workers from mandatory arbitration under the FAA.

C. This Court's precedents reinforce the narrow scope of § 1.

"Engaged in commerce" as used in federal statutes, does not mean "in commerce," "involving commerce," or "affecting commerce." There is a difference between activities that are *within* commerce and are, by their mere occurrence, themselves acts of interstate commerce—like physically hauling freight in a long-haul tractor trailer across State lines.

In *Gulf Oil Corp. v. Copp Paving Co., Inc.*, 330 U.S. 501 (1947), this Court considered whether specific business activities transcended sovereign lines—and thus were "engaged in" commerce—or whether the activities affected interstate commerce only indirectly or consequently. Copp Paving sued large oil company Gulf Oil and others alleging violations of federal antitrust laws, including price discrimination and anti-competitive practices. *See* 419 U.S. at 195. Section 2(a) of the Clayton Act prohibited certain price discrimination by "any person engaged in commerce" if the discriminatory sales involved commodities "in commerce." *Id.* at 199. In response, the defendant oil companies argued that Copp Paving (which ran an asphalt plant in California and sold asphalt for highway construction within the state) was not "engaged in commerce" as required by the Clayton Act.

This Court agreed. Copp Paving was not "in commerce" and thus it had no claim under the Clayton Act. *Id*. at 202. Purely intrastate sales of "asphaltic concrete [used] in the construction of interstate highways" are not, standing alone, within interstate

commerce. 419 U.S. at 195–96. "Engaging in commerce" has a lesser reach than, for example, the broader notion of "substantially affecting" commerce. *Id*. at 195. "In commerce" and "engaged in commerce" "denote only persons or activities within the flow of interstate commerce—the practical, economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer." *Id*.

In *United States v. American Bldg. Maint. Indus.*, 422 U.S. 271 (1975), the Court again interpreted "engaged in commerce" language from the Clayton Act. Section 7 of the Clayton Act, governing mergers and acquisitions, barred one company engaged in commerce from acquiring another company "engaged also in commerce", if the acquisition could substantially lessen competition. *Id*. at 275. American Building Maintenance, a national janitorial services company, acquired two janitorial companies (the Benton companies) that did business in a single State, and the federal government later challenged the merger. *Id*. at 274.

At issue was whether the Benton companies were "engaged in commerce." The Benton companies were purely intrastate service companies. They claimed not to be engaged in interstate commerce and argued that to implicate federal law both the acquiring and acquired companies had to be directly involved in the actual flow of commerce ("engaged in commerce"); it is not enough if one or both of the companies' activities substantially affect interstate commerce.

This Court agreed, drawing a sharp line: Congress never intended § 7 to "reach all corporations engaged in activities subject to the federal commerce power."

Id. at 283. It sought to regulate only those mergers where both companies actively take part in interstate commerce. The Benton companies were not engaged in interstate commerce because all their janitorial services were performed within California; their employees and supplies were local; and they did not send persons or goods across state lines as part of their service business. Cleaning the offices of interstate businesses is not engaging in commerce.

In short, the merger was outside the scope of the Clayton Act because the companies were not engaged in commerce. *Id*. at 283–84 ("At the time of the acquisition and merger, however, the Benton companies were completely insulated from any direct participation in interstate markets or the interstate flow of goods or services. The firms' activities were limited to providing janitorial services within Southern California to corporations that made wholly independent pricing decisions concerning their own products. Consequently, … in providing janitorial services the Benton companies were not themselves 'engaged in commerce' within the meaning of § 7.").

In *Circuit City Stores, Inc. v. Adams*, 532 U.S. at 110, the Court considered the "engaged in commerce" language of FAA § 1 on certiorari review of the Ninth Circuit which had incorrectly held that § 1 exempts *all* written employment contracts from arbitration. The plaintiff was a retail electronics salesman. *Id*. at 110. He claimed to be he engaged in interstate commerce simply because, leading up to his involvement as the retailer salesperson, the goods he sold at retail were manufactured overseas and dispatched to Circuit City through international shipping channels in the chain of global commerce. *Id.*

This Court disagreed with both the Ninth Circuit and the employee. The Court held that § 1 is much narrower than exempting all written employment contract. The "engaged in… commerce" in FAA § 1 means what it does in other federal statutes: a limited, circumscribed reach. The Circuit City m salesman was not exempt. Even though he indirectly affected interstate commerce (merely because Circuit City was a national retailer), that was not enough to bring him within § 1. He himself did not "engage in" interstate commerce in a manner analogous to sailors and railroad workers. Section 1 exempts only such transportation workers. *Id.* at 109.

In *New Prime Inc. v. Oliveira*, 586 U.S. at 112, the Court affirmed that transportation workers are exempt—and held that § 1 extends to cover both independent contractors and employees. The Court concluded that the § 1 exemption applied to an interstate truck driver who was engaged in interstate commerce; his status as an independent contractor was immaterial to his § 1 exemption. 586 U.S. at 106.

In *Southwest Airlines Co. v. Saxon*, 596 U.S. at 450, the Court used a two-step framework to evaluate the contours of § 1 and whether a given worker is exempt: (1) define the class of workers at issue by the work they typically perform; and (2) determine whether that class of workers is "engaged in foreign or interstate commerce" within the statute's meaning.

Under that framework, airline cargo loaders—workers who load and unload goods from planes traveling across state lines—fall within the exemption, because that class of employees is directly involved in interstate commerce. *Saxon* explains that "to be 'engaged' in 'commerce' means to be directly involved

in transporting goods across . . . borders"; thus, workers are exempt under § 1 only if they "play a direct and necessary role in the free flow of goods" across state or national lines. *Id.* at 457. A baggage or cargo loader for interstate flights qualifies as exempt under § 1 because transportation is "'still in progress'" during loading. *Id*. at 459 (quoting *Erie R.R. Co. v. Shuart*, 250 U.S. 465, 468 (1919)).

All told, text, history, and precedent converge on a single understanding of § 1. The exemption to the broad scope of the FAA is a targeted carve-out covering only transportation workers directly involved in moving goods or people across state or national lines. Seamen and railroad employees are the exemplar categories; any "other class of workers" exempt under § 1 must share their fundamental attribute of active engagement in interstate commerce.

Reading the exemption any more broadly would contradict the statutory phrase "engaged in commerce" as originally understood and would thwart Congress's intent to limit the carve-out to a narrow set of workers—specifically, those uniquely covered by distinct industry-specific regulations or otherwise at the heart of interstate transportation. The exception would swallow the rule. The decision below exemplifies how some lower courts have lost sight of these principles, stretching § 1 beyond its intended scope and departing from the FAA's text and history. This Court's intervention and guidance is needed.

II. The Court's review is needed to prevent further erosion of the FAA's uniform application and to reaffirm the historically correct interpretation of § 1.

A. Uniformity and predictability in FAA enforcement are paramount.

Congress enacted the FAA to overcome disparate treatment of arbitration agreements and to establish a strong federal policy favoring arbitration. That policy, as this Court has repeatedly recognized, demands a uniform approach across jurisdictions—arbitration agreements should be as enforceable in New York as they are in California or Texas. Allowing divergent interpretations of § 1 to persist undermines this uniformity. A worker in one circuit might be able to avoid arbitration (despite agreeing to arbitrate) by invoking an overly broad reading of the § 1 exemption, while an identically situated worker in another circuit would be compelled to arbitrate. Such forum-dependence encourages forum-shopping and invites gamesmanship over where a claim is filed.

It also leaves multi-state employers in a bind. An arbitration agreement might be enforceable against certain employees but not others based solely on geographic happenstance, defeating the expectation of a consistent dispute-resolution mechanism nationwide. The FAA was intended to preclude such inconsistency and to make arbitration agreements reliably enforceable except in the narrow instances Congress excluded. By granting certiorari, the Court can stake out, with certainty, the boundaries of FAA § 1. Doing so ensures that the FAA is applied uniformly nationwide, as Congress intended.

A uniform interpretation of the § 1 exemption means businesses and workers will know *ex ante* whether their arbitration agreements are enforceable, rather than rolling the dice on how a particular lower court might apply an amorphous standard. Clarity from this Court will reduce the need for threshold litigation over arbitrability, speeding the resolution of disputes in the manner the parties agreed.

B. Reaffirming historical meaning guards against unintended expansion or contraction of the exemption.

This Court's review also would re-anchor the interpretation of § 1 in its proper historical and textual foundation. The conflicting developments in the lower courts illustrate how easily judges, even with the best of intentions, can drift away from that foundation. Some courts—fearing the exemption might otherwise sweep too broadly—imposed an extra-textual "transportation industry" requirement to cabin § 1. But they strayed from the statutory text, and perhaps denied the exemption to workers whom Congress *would* have viewed as transportation workers (for example, truck drivers working for a retail company rather than a freight company).

On the other hand, other courts—reacting to modern logistics realities—stretched the phrase "engaged in commerce" to reach workers that earlier Congresses never intended to exempt, thus enlarging the carve-out beyond its historical scope. Neither form of judicial revisionism is appropriate. The proper course is neither "surgery" (adding new requirements to the text) nor unwarranted expansion (extending the words to new contexts never

envisioned), but faithful adherence to what Congress enacted. This Court can make that clear.

By returning to original public meaning, the Court would provide a principled, enduring standard that can be applied consistently even as the economy evolves. The FAA is now nearly a century old, yet its operative language remains the same. An originalist approach does not freeze the economy in 1925; it simply constrains courts to apply the statute as written, asking in each case: *Would this type of worker have been considered "engaged in interstate commerce" in the sense Congress intended in 1925?* If yes, the exemption applies; if not, it doesn't.

This approach readily adapts to new occupations by analogy. For instance, airplane cargo loaders were not common in 1925, but *Saxon* correctly analogized them to longshoremen and similar cargo handlers, fitting them within the original concept of transportation workers. Likewise, modern app-based delivery drivers can be analyzed by analogy to the types of drivers known in earlier eras (e.g., express company couriers or postal contractors).

The analysis must remain grounded in the statute's language and historical context, not be driven by policy preferences (whether pro- or anti-arbitration). The FAA represents a balance struck by Congress: on the one hand, it broadly enforces arbitration agreements (a principle *Amici* strongly support); on the other, it excludes a specific subset of workers (those Congress believed were covered by other regimes or presented unique considerations). Respecting that balance requires discipline in interpretation. This Court should intervene.

Doctrinally, this Court's recent decisions have already begun the course correction. In *New Prime*, the Court looked to 1925-era dictionaries and usage to conclude that "contracts of employment" in § 1 was a term broad enough to encompass independent contractor arrangements, reflecting how the phrase was understood then. And in *Saxon*—as well as in this Court's summary decision in *Bissonnette* (vacating a Second Circuit judgment)—the Court reiterated the primacy of the statutory text's focus on the work being performed and the originally narrow compass of what it means to be "engaged in commerce."

All that remains is for the Court to synthesize these lessons and definitively resolve the lingering circuit splits, thereby preventing any further drift. The Tenth Circuit's reasoning exemplifies one side of the divide, while the Fifth Circuit's approach represents the other. The correct approach hews to the statutory test of direct engagement in interstate commerce and brings uniformity to the law.

C. The issue is exceptionally important, affecting arbitration agreements covering millions of workers in many sectors.

Finally, the Court should grant review because the question presented has broad importance far beyond the immediate parties. Transportation and delivery work is ubiquitous in our modern economy. Many industries are embroiled in litigation over whether certain workers fall within § 1's exemption: long-haul truck drivers, last-mile package and food delivery drivers, rideshare drivers, port and warehouse workers, and railroad and airline contractors, are only a few of the affected groups. The confusion is real.

The exponential growth of e-commerce and the gig economy means that millions of workers now serve roles in the transportation or distribution of goods. Many of these workers (and the companies that engage them) are parties to arbitration agreements. A clear, Supreme Court-sanctioned, rule on § 1's scope is urgently needed to guide lower courts and contracting parties. Otherwise, U.S. federal courts will continue to see protracted preliminary fights and inconsistent results—outcomes that benefit no one except those determined to avoid arbitration at any cost, contrary to the FAA's purposes.

The question carries significant consequences not only for individual arbitration agreements but also for the enforceability of class-action waivers and other contract provisions often tied to arbitration clauses. If certain workers are deemed exempt under § 1, companies may face class or collective litigation in court that they believed would be subject to individualized arbitration, with enormous differences in potential exposure and cost.

Businesses need clarity on this point when deciding whether to invest in nationwide arbitration programs. Workers, too, deserve to know their rights: a true transportation worker should understand if he or she is entitled to pursue remedies in court notwithstanding an arbitration agreement, whereas a non-transportation worker should know that his or her arbitration agreement will be honored. These are weighty rights that should not depend on a patchwork of regional interpretations.

Resolving the scope of § 1—one way or the other—does not tilt the playing field in favor of either side; it simply delineates it. If certain workers (e.g., those

genuinely in interstate transportation roles) are exempt, then their disputes will proceed in court or under industry-specific laws (like the Railway Labor Act) as Congress contemplated. If they are not exempt, then the FAA ensures their arbitration agreements are enforced, as Congress likewise directed. The judiciary's role is to determine which side of the line a given class of workers falls on, based on the statute Congress wrote. That determination should not vary from court to court. By granting certiorari and correcting the decision below, this Court can restore coherence—reaffirming that § 1 means today exactly what it meant in 1925, no more and no less.

Nor would the Court need to address every possible factual permutation at this stage. The task here is to articulate the proper legal test. For example, the Court could hold that a class of workers is "engaged in interstate commerce" under § 1 only if the class's typical duties directly involve the interstate movement of goods or passengers across state or national boundaries, or the loading or unloading of goods during such cross-border transit.

Such a holding would provide a clear rule of decision. Lower courts could then apply that rule to various contexts: If a worker's job is to transport goods across state lines (or to load goods onto vehicles that will cross state lines), the worker falls within the exemption; if the worker's job is to transport goods only within a single state *after* interstate movement has concluded, the exemption does not apply. Under the clarified standard, the outcome of this case on remand would be straightforward—whichever side it favors. The Court need not wade into every factual nuance or ancillary issue about worker classification.

The FAA's transportation-worker exemption is a targeted carve-out, born of an era when specific transportation sectors, including some just beginning (like interstate trucking), were governed by distinct legal regimes. Ensuring that the exemption remains targeted today preserves the FAA's fundamental promise that arbitration agreements must be enforced according to their terms in the vast run of employment relationships. The FAA, when correctly applied, avoids "complexity and uncertainty" surrounding enforcement of arbitration agreements. But the current muddle over § 1 creates exactly the kind of complexity that breeds litigation and undermines arbitration's benefits. That is anathema to the FAA.

This Court's review will dispel that uncertainty. The Tenth Circuit's decision below, if left uncorrected, marks a significant expansion of the exemption. It is an outlier against the backdrop of this Court's FAA jurisprudence. Certiorari should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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