No. 24-935

IN THE

Supreme Court of the United States

FLOWERS FOODS, INC., ET AL.,

Petitioners,

v.

ANGELO BROCK,

Respondent.

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

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QUESTION PRESENTED

Are workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders—"transportation workers" "engaged in foreign or interstate commerce" for purposes of the Federal Arbitration Act's § 1 exemption?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners Flowers Foods, Inc., Flowers Bakeries, LLC, and Flowers Baking Co. of Denver, LLC, were Defendants-Appellants in the Tenth Circuit. Petitioner Flowers Baking Co. of Denver, LLC, is a wholly owned subsidiary of Petitioner Flowers Bakeries, LLC, which is itself a subsidiary of Petitioner Flowers Foods, Inc., the ultimate parent company. Petitioner Flowers Foods, Inc., is a publicly held corporation whose shares are traded on the New York Stock Exchange.

Respondent Angelo Brock was Plaintiff-Appellee in the Tenth Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Brock v. Flowers Foods, Inc., et al.*, No. 1:22-cv-02413-CNS-CYC (D. Colo.) (motion to compel arbitration denied May 16, 2023).
- *Brock v. Flowers Foods, Inc., et al.*, No. 23-1182 (10th Cir.) (denial of motion to compel arbitration affirmed Nov. 12, 2024; petition for rehearing and rehearing en banc denied Dec. 9, 2024).

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INTRODUCTION

The Federal Arbitration Act ("FAA") requires courts to enforce the arbitration provisions "in any … contract evidencing a transaction involving commerce," 9 U.S.C. § 2, except "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." *Id.* § 1. In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), this Court held that the § 1 exception for "contracts of employment" requires a "narrow construction" and "exempts from the FAA only contracts of employment of transportation workers." *Id.* at 109, 118-19. Since then, the Court has interpreted § 1 multiple times, clarifying who qualifies as a transportation worker under its residual clause—the "any other class of workers" language. *See New Prime Inc. v. Oliveira*, 586 U.S. 105, 116 (2019); *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 455-56 (2022); *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 252-56 (2024).

Several rules have emerged from these decisions. *First*, the Court has held that § 1's text focuses on "the performance of *work* by *workers*." *New Prime*, 586 U.S. at 116 (emphasis in original). Thus, courts must define the relevant "class of workers" based on "what [the] worker does for [the] employer," not what the employer does more generally. *Bissonnette*, 601 U.S. at 251. *Second*, to trigger the § 1 exemption, the workers must be engaged in the "transportation of goods across borders via the channels of foreign or interstate commerce." *Id.* at 256 (quoting *Saxon*, 596 U.S. at 458). That is, the worker must be "directly involved in transporting goods across state or international borders," so much so that the worker's

work is, "as a practical matter, part of the interstate transportation of goods." *Saxon*, 596 U.S. at 457-58. *Third*, § 1 can reasonably be read as drafted with the arbitral statutes governing seamen and railroad employees in mind. *Circuit City*, 532 U.S. at 121. At the time, Congress's authority over individual employment contracts was limited, and those schemes were limited to seamen on oceanic voyages engaged in interstate or foreign transportation and common carrier railroad employees working interstate lines.

Respondent Angelo Brock ("Brock") does not perform any work that "directly involve[s]" border crossings. *Saxon*, 596 U.S. at 457. Brock's corporation, Brock, Inc., orders baked goods from Petitioners Flowers Foods, Inc., Flowers Bakeries, LLC, and Flowers Baking Co. of Denver, LLC (collectively, "Flowers"). A third-party logistics company then ships the goods to a Colorado warehouse, where they are unloaded and arranged by a Flowers "splitter." While Brock is not required to personally perform any services at all, he later purchases the goods from Flowers Baking Company of Denver, LLC, takes title to them, and collects his pre-sorted goods. JA 2-3 ¶¶ 8, 10-11. Brock then sells and delivers them to his Colorado-based customers. *Id.* at 3 ¶ 11. Brock thus performs *exclusively local* work—delivering baked goods from one point in Colorado to another. In that respect, Brock is no different from a local delivery driver, retail stocker, or retail clerk.

Notwithstanding the exclusively local nature of Brock's work, the Tenth Circuit held that he is an interstate transportation worker under § 1. In the court's view, Brock was engaged in foreign or interstate commerce because "[his] intrastate route

formed a constituent part of the goods' interstate journey." Pet. App. 18a. In so ruling, the Tenth Circuit joined the First and Ninth Circuits, which also define the exception's scope by reference to the movement of goods in the "stream" or "flow" of interstate commerce. *See Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 915 (9th Cir. 2020); *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 26 (1st Cir. 2020).

That approach cannot be squared with § 1's text or this Court's precedent, both of which instruct that what matters is the work the class of workers performs. To be exempt, the class must be part of the interstate transportation of goods. Under the Tenth Circuit's approach, however, workers who perform exactly the same work—delivering goods intrastate—may or may not be exempt depending on the transaction prompting the goods' delivery. Congress could have written § 1 to focus on goods or transactions rather than the workers' work. It did so in § 2. *See* 9 U.S.C. § 2 (applying to "a contract evidencing a transaction involving commerce"). But it chose narrower language in § 1. That variance cannot be disregarded.

Having unmoored the § 1 inquiry from text and precedent, the Tenth Circuit relied on pre-1925 cases examining the language of the Federal Employers' Liability Act ("FELA") and adopted a judge-made, nonexclusive, multi-factor balancing test that undermines the FAA's goals. To determine whether Brock's intrastate deliveries formed a "constituent part" of the goods' interstate journey, Pet. App. 18a, the court examined the commercial relationships between and among Flowers, Brock, and the local retailers; whether Flowers' baked goods had come to

rest at the warehouse; how Flowers treated accounts receivable; how Brock financed his business; how spoiled bread was treated; whether Brock paid a warehousing fee; and how nationwide accounts were priced. *Id.* at 19a-28a. The court also employed diagrams to "illustrate" the "various relationships" between "Flowers and Brock's customers." *Id.* at 19a-22a. None of these considerations has any basis in § 1's text or the Court's § 1 precedent.

Worse, the Tenth Circuit's ad hoc analysis—which shows up in the First and Ninth Circuits too—flouts the FAA's central purpose of speedy and efficient dispute resolution. It turns a simple threshold inquiry into a complex factual dispute that requires mini-trials.

Accordingly, the decision below should be reversed.

OPINIONS BELOW

The district court's order denying Flowers' motion to compel arbitration is reported at 673 F. Supp. 3d 1180 and reproduced at Pet. App. 37a-57a. The Tenth Circuit's opinion affirming the district court's order denying Flowers' motion to compel arbitration is reported at 121 F.4th 753 and reproduced at Pet. App. 1a-34a. The Tenth Circuit's order denying rehearing en banc is reproduced at Pet. App. 35a-36a.

JURISDICTION

The Tenth Circuit issued its decision in this case on November 12, 2024. It denied Flowers' timely petition for rehearing en banc on December 9, 2024. A petition for a writ of certiorari was timely filed on February 14, 2025, and this Court granted certiorari on October 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

9 U.S.C. § 1 provides:

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but 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.

STATEMENT OF THE CASE

A. Legal Framework

1. Congress enacted the FAA in 1925 "to reverse … longstanding judicial hostility to arbitration agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). The statute's "principal purpose," which is "readily apparent from [its] text," is "ensur[ing] that private arbitration agreements are enforced according to their terms." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011). Indeed, this Court has found it "beyond dispute" that "the FAA was designed to promote arbitration" and "embod[ies] a national policy favoring arbitration." *Id.* at 345-46 (alterations omitted).

Section 2 contains the FAA's primary substantive guarantee: that arbitration agreements "in any … contract evidencing a transaction involving commerce … shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. This provision extends to the "full" scope of Congress's Commerce Clause power. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995). The FAA thus governs "a wide range of written arbitration agreements," including those requiring arbitration of employment disputes. *Circuit City*, 532 U.S. at 111-19.

Section 1 of the FAA carves out from this protection a limited range of agreements: "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

2. This Court has addressed the § 1 exemption on multiple occasions, each time emphasizing its narrow

reach. First, in *Circuit City*, the Court held that § 1 requires a "narrow construction" and that its so-called residual clause—"any other class of workers engaged in foreign or interstate commerce"—is "confine[d]" to "only contracts of employment of transportation workers." 532 U.S. at 109, 118-19. This result followed from the fact that "the terms 'seamen' and 'railroad employees'" appear "just before" the residual clause, and their shared feature is their status as "transportation workers." *Id.* at 114-15, 118. In addition, the residual clause's use of "engaged in" foreign or interstate commerce signals a more limited scope than "involving" commerce or "affecting" commerce, which Congress uses when it "inten[ds] to exercise [its] commerce power to the full." *Id.* at 115.

The Court next addressed § 1 in *New Prime*, 586 U.S. 105. There, the parties agreed that the plaintiff, an interstate truck driver, "qualifie[d] as a 'worker engaged in interstate commerce.'" *Id.* at 112 (alterations omitted). The issue before the Court was whether § 1's phrase "contracts of employment" extends to "contracts … [that] establish only an independent contractor relationship." *Id.* at 113. The Court concluded that independent contractors fall within § 1, because § 1 uses the term "workers" "to capture any contract for the performance of *work* by *workers*." *Id.* at 116 (emphasis in original).

A few years later, in *Saxon*, 596 U.S. at 455-56, this Court developed a framework for assessing whether a class of workers fits within § 1's transportation-worker exemption. Under that framework, courts must first "defin[e] the relevant 'class of workers'" "based on what [the workers] do[]" and then "determine whether that class of workers is 'engaged

in foreign or interstate commerce.'" *Id.* The Court emphasized that to be engaged in foreign or interstate commerce, the class "must at least play a direct and 'necessary role in the free flow of goods' across borders." *Id.* at 458 (quoting *Circuit City*, 532 U.S. at 121). "Put another way, transportation workers must be actively 'engaged in transportation' of those goods across borders via the channels of interstate commerce." *Id.* (quoting *Circuit City*, 532 U.S. at 121).

Applying that framework to a Southwest Airlines employee "who loads cargo on a plane bound for interstate transit," the Court concluded that the employee's class of workers was "intimately involved with the commerce (e.g., transportation) of that cargo." *Id.* The Court explained that there was "no doubt that [interstate] transportation [is] still in progress, and that a worker is engaged in that transportation, when she is doing the work of unloading or loading cargo from a vehicle carrying goods in interstate transit." *Id.* at 458-59 (internal quotation marks and citation omitted) (alterations in original).

Most recently, in *Bissonnette*, 601 U.S. 246, this Court held that whether the § 1 exemption applies turns on the specific work the workers perform, not the industry in which they operate. In doing so, the Court stressed the importance of "limiting § 1 to its appropriately 'narrow' scope." *Id.* at 256 (quoting *Circuit City*, 532 U.S. at 118). Echoing *Saxon*, the Court underscored that "a transportation worker is one who is 'actively' 'engaged in transportation of goods across borders via the channels of foreign or interstate commerce,'" and that "any exempt worker 'must at least play a direct and necessary role in the

free flow of goods across borders.'" *Id.* (quoting *Saxon*, 596 U.S. at 458). It thus rejected the idea that "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration." *Id.*

B. Factual Background

1. Flowers produces packaged bakery goods, including "fresh breads, buns, rolls, and snack cakes that are sold in supermarkets, drug stores, and convenience stores throughout the United States." Pet. App. 3a. Flowers makes most of its sales to independent distributors—independently operated companies that "buy the rights to distribute Flowers products in particular geographic areas" and then resell them to stores within those areas. *Id.* at 4a; *see* JA 8-11. These local sales follow a common pattern: After an independent distributor orders baked goods from Flowers, Flowers utilizes third-party logistics companies to deliver them to a local warehouse, where they are unloaded and sorted by Flowers' personnel. JA 22-23. The distributor then picks up the pre-sorted, unloaded goods at the warehouse, takes title to them, and sells them for profit to local stores within its territory. *Id.* at 3 ¶ 10.

2. Brock is the owner and operator of Brock, Inc., an independent distributor for Flowers. *Id.* at 1 ¶ 4. Brock, Inc., is a party to a distribution agreement with the Flowers Denver subsidiary and owns the distribution rights for Flowers products solely within Colorado. Pet. App. 4a; JA 1-2 ¶¶ 4-5. The distribution agreement under which Brock, Inc., operates is limited to local services. It nowhere references responsibilities related to interstate

commerce. Indeed, Brock himself need not conduct any services personally; he is free to hire workers to perform any or all of Brock, Inc.'s responsibilities under the agreement. JA 2 ¶ 8; *id.* at 29. As the district court explained, Brock "receives shipments of Flowers products prepared outside of Colorado that he has ordered for his customers, loads them onto his own trucks, and delivers the products to his customers" exclusively within the State. Pet. App. 46a.

As part of Flowers' distribution agreement with Brock, Inc., the parties agreed to arbitrate "[a]ll claims, disputes, and controversies arising out of or in any manner relating to [the Distribution] Agreement." JA 33; *see also id.* at 57-63. The arbitration agreement covers "any … claims premised upon [an independent distributor's] alleged status as anything other than an independent contractor." *Id.* at 60. Brock separately acknowledged that he "is subject to the Arbitration Agreement" in his personal capacity. *Id.* at 49-50; *see also id.* at 57 (requiring arbitration of claims that an "owner" of an independent distributor brings against Flowers).

C. Procedural History

Notwithstanding the arbitration agreement, Brock filed a putative class action against Flowers alleging claims under the Fair Labor Standards Act and Colorado law. Pet. App. 40a. Flowers moved to dismiss or, in the alternative, stay the proceedings and compel arbitration under the FAA and Colorado law. *Id.* at 37a.

The district court denied the motion, ruling that § 1's exemption for transportation workers "engaged

in foreign or interstate commerce" applied. *Id.* at 52a, 57a. It concluded that, even though Brock never crossed state lines or directly interacted with vehicles that did, the contracts between Brock, Inc., and its Colorado customers "directly affect[] channels of commerce and constitute[] the requisite engagement with interstate commerce" to trigger the exemption. *Id.* at 51a.

Flowers appealed, *see* 9 U.S.C. § 16(a), and the Tenth Circuit affirmed. Pet. App. 3a. Purporting to apply *Saxon*, the Tenth Circuit determined that the relevant class of workers consisted of those who "deliver Flowers goods in trucks to their customers." *Id.* at 11a. The court recognized that Flowers, not Brock or any class of workers of which he is a part, unloads the goods from trucks that cross state lines. *Id.* at 5a. It also accepted that "neither Brock nor any others he employed crossed state lines to deliver goods." *Id.* at 12a.

Nevertheless, the Tenth Circuit "adopt[ed] the[] reasoning" of the First and Ninth Circuits and concluded that the key question was "whether the interstate leg of the goods' journey and Brock's intrastate delivery of the goods form one continuous interstate journey." *Id.* at 18a-19a. The court identified three nonexclusive factors it believed informed that determination: "(1) the buyer-seller relationship between Flowers and Brock, (2) the buyer-seller relationship between Brock and Brock's customers, and (3) the buyer-seller relationship, if any, between Flowers and Brock's customers." *Id.* at 18a; *see also id.* at 19a n.5 (stressing that these factors were nonexclusive).

Relying on numerous diagrams to illustrate those relationships, *id.* at 20a-22a, the Tenth Circuit declared that the third factor was "key." *Id.* at 19a. It purported to find that Flowers' "real interest" was in delivering goods to stores, not to Brock, Inc. *Id.* at 22a. Because, in the Tenth Circuit's view, Flowers' "true customers" were local retail stores, it concluded that Brock was "Flowers's last-mile delivery driver" and "engaged in interstate commerce" within the meaning of § 1. *Id.* at 22a, 28a-29a. The court thus held the FAA inapplicable and affirmed the order denying the motion to compel arbitration. *See id.* at 29a.[1]

SUMMARY OF ARGUMENT

I. Every source of statutory meaning—text, precedent, history, and purpose—confirms that drivers like Brock, who neither move goods across state lines nor interact with the vehicles that do, are not transportation workers engaged in interstate commerce under § 1.

A. Section 1's text, both on its face and as interpreted by this Court, requires that workers perform work with a closer tie to interstate

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[1] Flowers separately argued that the distribution agreement is not a "contract of employment" under § 1—an issue currently percolating among lower courts. *See, e.g.*, *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 595-96 (4th Cir. 2023); *Tillman Transp., LLC v. MI Bus. Inc.*, 95 F.4th 1057, 1064 (6th Cir. 2024); *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190, 1196-97 (9th Cir. 2024). Flowers also separately argued that Brock is not a transportation worker because he is a franchise owner, and that the arbitration agreement was enforceable under state law. *See* Pet. App. 29a-34a; BIO 15. None of these issues is before the Court in this case.

transportation than local deliveries. Numerous statutory terms—from "contracts *of employment*" to "class of *workers*" to "*engaged* in"—all put the focus on the work the relevant workers actually perform. The employer's business, the nature of the transaction prompting the goods' movement, the goods' broader journey, and what others may do with the goods are all statutorily beside the point.

Focusing just on the workers' work, this is a simple case. Drivers like Brock lack any "direct," "active," or "necessary" role in cross-border transportation. Their work begins and ends within the same State. They do not interact with vehicles that move the goods interstate. And they have no other direct tie to interstate transportation. Their indirect tie to goods that have traveled interstate does not suffice.

B. Statutory history and purpose confirm that result. As this Court has recognized, Congress may have enacted § 1, at least in part, to avoid disrupting other federal dispute-resolution schemes that existed in 1925. At that time, seamen on intrastate voyages in intrastate waters and railroad employees who worked on local lines were typically excluded from those schemes. Excluding local delivery drivers from § 1 is thus consistent with Congress's design. It is also consistent with Congress's limited authority to regulate private employment contracts in 1925.

II. The Tenth Circuit erred in concluding otherwise.

A. The Tenth Circuit, following the First and Ninth Circuits, asked the wrong question: was the underlying transaction interstate or intrastate, not what does the worker do. A goods- or transaction-focused inquiry is inconsistent with the FAA's text

and this Court's § 1 precedent, which focus on the workers' work. And the pre-1925 FELA cases from which that inquiry derives shed no light on the FAA's meaning. FELA has different terms, a different focus, and a different purpose.

B. Having untethered itself from the FAA's text and this Court's § 1 precedent, the decision below turned on a litany of nonexclusive, judge-made factors. Indeed, courts in the First, Ninth, and Tenth Circuits now routinely examine a dizzying and ever-expanding array of considerations to assess whether § 1 applies. Those atextual inquiries have transformed motions to compel arbitration—proceedings Congress intended to be quick and inexpensive—into prolonged mini-trials, often involving extensive discovery. That result is impossible to square with text and precedent, or with the purposes of § 1 and the FAA more broadly.

ARGUMENT

I. SECTION ONE EXTENDS ONLY TO TRANSPORTATION WORKERS WHO CROSS BORDERS OR WHO DIRECTLY PARTICIPATE IN TRANSPORTING GOODS ACROSS BORDERS.

A. Text And Precedent Make Clear That § 1 Applies Only To Transportation Workers Who Engage In Cross-Border Transportation.

1. Section 1 exempts from the FAA the "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Like any other statute, § 1's meaning should be discerned by its terms, according to their "ordinary, contemporary, common meaning," when "read and interpreted in their context." *Saxon*,

596 U.S. at 455 (internal quotation marks and citations omitted). A term's ordinary meaning is determined "at the time Congress enacted the statute," which here is 1925. *New Prime*, 586 U.S. at 113; *see Saxon*, 596 U.S. at 460 (determining meaning of "seamen" in 1925). This Court has already interpreted § 1 in a variety of legal and factual contexts and, in doing so, has defined several of its key terms.

2. Two interpretive rules emerge from § 1's terms. First, the "'class of workers' is properly defined based on *what a worker does* for an employer." *Bissonnette*, 601 U.S. at 251 (emphasis added); *New Prime*, 586 U.S. at 116 (Congress focused on "*work* by *workers*" (emphasis in original)). Second, to qualify under the exemption, "what a worker does" must *directly* and *actively* touch the movement of goods across borders, such that the worker becomes, "as a practical matter, part of the interstate transportation of goods." *Saxon*, 596 U.S. at 457. Every term in § 1 compels this interpretation.

"Contracts of employment." "[I]n 1925 the term 'contract of employment' wasn't defined in any of the (many) popular or legal dictionaries," suggesting that "the phrase wasn't then a term of art bearing some specialized meaning." *New Prime*, 586 U.S. at 114. The term "employment," however, was well understood to mean "work." *Employment*, 5 THE CENTURY DICTIONARY & CYCLOPEDIA 1904 (1911) ("Work or business of any kind"); *Employment*, BLACK'S LAW DICTIONARY (2d ed. 1910) ("an engagement or rendering services" for oneself or

another).[2] Thus, this Court has recognized that a "contract of employment" under § 1 is "an agreement to perform work" and that the "contract of employment" language trains § 1 on "the performance of *work* by *workers*." *New Prime*, 586 U.S. at 114, 116 (emphasis in original).

"[O]f seamen, railroad employees, or any other class of workers." Congress, however, was not concerned with just *any* work or worker. *See Circuit City*, 532 U.S. at 109 (holding that § 1 does not exempt all employment contracts). Section 1 "is limited to *transportation workers*," their work, and their employment contracts. *Bissonnette*, 601 U.S. at 252 (emphasis added) (citing *Circuit City*, 532 U.S. at 109-11).

This limit follows from the *ejusdem generis* canon. As the Court has explained, § 1's "general phrase 'class of workers engaged in ... commerce' is 'controlled and defined by reference to' the specific categories 'seamen' and 'railroad employees' that precede it." *Id.* (quoting *Circuit City*, 532 U.S. at 115). The "linkage" between "seamen" and "railroad employees" is that both are classes of transportation workers. *Id.* at 252-53 (quoting *Circuit City*, 532 U.S. at 118-119, 121). And "[t]hose classes of workers … are connected by what they do, not for whom they do it." *Id.* at 255. It follows that the other

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[2] *See also Work*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (1st ed. 1909) (listing "work" as a synonym for "employment"); *Employment*, WEBSTER'S COLLEGIATE DICTIONARY (3d ed. 1916) (same); *Employment*, 3 OXFORD ENGLISH DICTIONARY (1933) ("That on which (one) is employed; business; occupation; a special errand or commission").

class of workers "in the residual clause" is "limited in the same way"—to transportation workers. *Id.* at 253.

The phrase "class of workers" also focuses § 1 on the workers' work. In 1925, a "worker" was someone who performed work. *Worker*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (1st ed. 1909) ("One that works"); *Worker*, FUNK & WAGNALL'S NEW STANDARD DICTIONARY (1913) ("One who or that which performs work"). Thus, this Court has recognized that "[t]he word 'workers' directs the interpreter's attention to 'the *performance* of work.'" *Saxon*, 596 U.S. at 456 (quoting *New Prime*, 586 U.S. at 116). And due to *ejusdem generis*, the relevant work is transportation work.

"[E]ngaged in foreign or interstate commerce." Section 1 then goes on to specify the *kind* of transportation work transportation workers must perform in order to be exempt. They must be "engaged in foreign or interstate commerce." 9 U.S.C. § 1.

Like § 1's other terms, "the word 'engaged' … emphasizes the actual work that the members of the class, as a whole, typically carry out." *Saxon*, 596 U.S. at 456 (collecting authority). It also conveys that the workers must be directly, actively, and personally part of the foreign or interstate transportation. In 1925, "engaged" was understood to mean "to take a part; to employ or involve one's self; to devote attention and effort." *Engage*, WEBSTER'S NEW INTERNATIONAL DICTIONARY (1st ed. 1909); *Engage*, BLACK'S LAW DICTIONARY (3d ed. 1933) ("[t]o employ or involve one's self; to take part in").

The term "engaged" thus requires the worker to actively and personally "take a part" in the movement

of goods across borders. In the Court's words, the worker must be "so closely related to interstate transportation as to be practically a part of it." *Saxon*, 596 U.S. at 457 (quoting *Balt. & Ohio Sw. R.R. Co. v. Burtch*, 263 U.S. 540, 544 (1924)); *see id.* at 458 (worker "is *intimately* involved with commerce (e.g., transportation) of that cargo" (emphasis added)).

The meaningful-variation canon confirms this interpretation. *See Circuit City*, 532 U.S. at 115-16; *Saxon*, 596 U.S. at 457-58. In FAA § 2, Congress used the term "involving commerce" to describe that provision's reach, and in doing so signaled its intent to exercise its full Commerce Clause power. *See Allied-Bruce*, 513 U.S. at 272-74. But, as this Court has repeatedly explained, Congress used the narrower "engaged in foreign or interstate commerce" formulation in § 1 to define that provision's scope more restrictively than § 2's. *See Circuit City*, 532 U.S. at 115-19; *Saxon*, 596 U.S. at 457-58.

In particular, the "commerce" in which the workers must be "intimately involved" is cross-border transportation. Commerce includes "the transportation of … goods, both by land and by sea." *Commerce*, BLACK'S LAW DICTIONARY (2d ed. 1910). And, as this Court held in *Saxon*, the *ejusdem generis* canon narrows the relevant "commerce" to transportation work. *See Saxon*, 596 U.S. at 458 (citing *Circuit City*, 532 U.S. at 115). Again, the common thread connecting seamen and railroad employees is "what they do." *Bissonnette*, 601 U.S. at 255. And what they do is transportation. Thus, like seamen and railroad employees, the residual clause "worker must *at least* play a direct and 'necessary role in the free flow'"—*i.e.*, the transportation—"'of goods.'"

Id. at 256 (quoting *Circuit City*, 532 U.S. at 121) (emphasis added).

And not just any transportation. To fall under § 1, the workers must play an active role in moving goods "across borders." *Id.* From the time the FAA was adopted, "interstate commerce" has meant "[t]raffic, intercourse, commercial trading, or the transportation of persons or property between or among the several states of the Union." *Interstate Commerce*, BLACK'S LAW DICTIONARY (2d ed. 1910); *accord Interstate Commerce*, BLACK'S LAW DICTIONARY (3d ed. 1933); *see Interstate Commerce*, THE CENTURY DICTIONARY & CYCLOPEDIA (1911) (commerce "carried on by lines of transport extending into more than one State"); *Saxon*, 596 U.S. at 457. "Foreign commerce" has similarly meant commerce "between the United States and foreign countries." BLACK'S LAW DICTIONARY (2d ed. 1910) (defining "foreign commerce" under the definition of "commerce").

Reading "foreign or interstate commerce" to require cross-border transportation is further compelled by the requirement that each word of a statute have meaning. *See* Antonin Scalia & Bryan Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012). Just before the residual clause uses "foreign or interstate commerce," § 1 limits "commerce" to "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation." 9 U.S.C. § 1. By inserting "*foreign or interstate*" before "commerce" literally words later,

Congress made clear its intent to narrow the residual clause's geographic scope even more than the statutory definition of commerce, limiting it to transportation across a state or foreign border.

3. Putting the textual pieces together, § 1's terms require an examination of the relevant class of workers' *transportation work*, and the exemption is triggered only when the class of workers is directly and actively part of moving "goods across borders via the channels of foreign or interstate commerce." *Bissonnette*, 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458); *see also Wallace v. Grubhub Hldgs., Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.) (holding that the class must be "actively engaged in the movement of goods across interstate lines").

This reading of § 1 is effectively compelled by this Court's precedents. The Court has repeatedly stressed that the exempted workers' work "must *at least* play a *direct* and *necessary* role in the free flow of goods across borders." *Saxon*, 596 U.S. 458 (emphasis added) (internal quotation marks and citation omitted). That is, the workers must be "actively engaged in transportation of … goods *across borders*." *Bissonnette*, 601 U.S. at 256 (quoting *Saxon*, 596 U.S. at 458) (internal quotation marks and citations omitted) (emphasis added). Indeed, the Court has called this kind of "direct and necessary role in the transportation of goods across borders" a "requirement[]" of § 1. *Id.* (internal quotation marks and citations omitted).

The Court has also made clear that factors other than the workers' own work do not define or limit § 1. *See Saxon*, 596 U.S. at 458; *Bissonnette*, 601 U.S. at

256. It held in *Saxon* that an airline baggage handler is "a member of a 'class of workers' based on what she does at [the airline], not what [the airline] does generally." *Saxon*, 596 U.S. at 456. And it held in *Bissonnette* that there is no "requirement" that a "transportation worker must work for a company in the transportation industry to be exempt under § 1 of the FAA," because § 1 focuses on the work a class of workers performs. *Bissonnette*, 601 U.S. at 252. Importing factors other than the workers' work into the § 1 analysis would conflict with both *Saxon* and *Bissonnette* and require courts to fashion their own rules "without any guide in the text of § 1 or [the Court's] precedent." *See Bissonnette*, 601 U.S. at 254.

4. Under that principle, this case is straightforward. Classes of workers who personally transport goods across state lines—the interstate truckers at issue in *New Prime*, for instance—play an "active," "direct," and "necessary" role in the cross-border movement of those goods. *See, e.g.*, *New Prime*, 586 U.S. at 108, 113, 120. So do those who perform other work that is "so closely related to interstate transportation as to be practically a part of it." *Saxon*, 596 U.S. at 457. The ramp agents at issue in *Saxon*, "who load[] cargo on a plane bound for interstate transit," are a prime example of workers falling into this category. *Id.* at 458.

Brock fits neither bill. Brock's work starts and ends in Colorado. He picks up pre-sorted, unloaded goods at a Colorado warehouse, takes title to them, sells them, and delivers them to his Colorado customers. JA 2-3 ¶¶ 8, 10-11. Without dispute, Brock never transports goods across borders in the course of his work. *See* Pet. App. 12a; BIO 18. Brock's distribution

agreement focuses solely on intrastate work. Nor is Brock's work directly and actively part of the goods' movement across borders. He never interacts with trucks or other vehicles crossing state lines. JA 86-87 ¶ 14.

Brock thus looks nothing like workers who fall within § 1's scope. Brock is different from the truck driver in *New Prime* because he does not carry Flowers' goods across state lines. *See* Pet. App. 12a; BIO 18. And he is different from the cargo loader in *Saxon* because he does not load or unload cargo from vehicles on interstate journeys; Flowers does that. JA 2-3 ¶¶ 8, 10-11, 86-87, ¶ 14. Brock's work is moving goods from one local spot to another.

Indeed, the transportation work Brock performs is no different from a local pizza delivery driver's work; they both move goods intrastate. Brock's work would be exactly the same if Flowers' bakeries were in Colorado and Flowers delivered the baked goods to the warehouse via intrastate transportation. In all instances, the transportation work involves only moving products from one in-State point to another, without any direct, active, or necessary engagement in the goods' movement across borders.

5. Whether Brock is transporting goods that were purchased from an out-of-State manufacturer or previously transported across a border makes no difference to the § 1 analysis. After all, whether the goods Brock transports were part of an interstate transaction is irrelevant to the actual work Brock performs. Their interstate journey does not affect the actual work that Brock performs.

Focusing on the goods improperly shifts the § 1 inquiry from the workers' work to the transaction prompting the goods' movement. No term in § 1 focuses the interpreter on, let alone differentiates between, the transactions that prompt a good's travel. Its object is the "contract of employment," which as explained (*see supra* at 15-16), trains the exemption on "what the class of workers is engaged in, and not what it is carrying." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021). The *transaction* prompting the goods' movement is of no concern to § 1 at all.

On this score, § 1's textual focus contrasts sharply with FAA § 2. Section 2's scope, unlike § 1's, extends to "contract[s] evidencing a *transaction* involving commerce." 9 U.S.C. § 2 (emphasis added). Here, too, the meaningful-variation canon carries the day. Just as Congress's contrasting use of "engaged in" in § 1 and "involving" in § 2 demonstrates Congress's intent to denote different ideas and scopes, Congress's focus on the "contract of employment" in § 1 and "a contract evidencing a transaction" in § 2 differentiates the two provisions and restricts § 1. *See Circuit City*, 532 U.S. at 115-16. Section 1's scope is narrowly defined by the performance of work, while § 2's is broadly defined by commercial transactions.

B. Historical Context Confirms This Reading.

History and purpose confirm that § 1 does not cover local drivers like Brock. *See, e.g.*, *Wooden v. United States*, 595 U.S. 360, 371 (2022) (looking to history and purpose as further indicia of meaning).

1. Flowers' Interpretation Would Not Have Disrupted Parallel Arbitral Schemes.

As this Court has noted, "[i]t is reasonable to assume that Congress excluded 'seamen' and 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Circuit City*, 532 U.S. at 121. Flowers' interpretation of § 1 is consistent with that assumption because it reads § 1 in a way that closely parallels the coverage of the federal dispute-resolution mechanisms governing seamen and railroad employees.

Shipping Commissioner Arbitration

1. The maritime arbitration scheme that likely inspired the inclusion of "seamen" in § 1 excluded those who sailed on intrastate voyages in intrastate waters. Under the Shipping Commissioner Act of 1872 ("Shipping Commissioner Act" or the "Act"), "[e]very shipping[]commissioner" was authorized to "hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew." Ch. 322, § 25, 17 Stat. 262, 267 (1872). The shipping commissioner's jurisdiction, however, was not unlimited. The Act applied only to ships "bound from a port in the United States to any foreign port, or … bound from a port on the Atlantic to a port on the Pacific, or vice versa," but not "to masters of coastwise nor to masters of lake-going vessels that touch at foreign ports." *Id.* § 12, 17 Stat. at 264. The commissioner could hear only those questions that "both parties agree[d] in writing to submit to him." *Id.*

§ 25, 17 Stat. at 267. And, the arbitration process did not extend to all seamen, only to "crew." *Id.*; *see also* 46 U.S.C. § 651 (1925) (arbitration applied to "any of [the master's or owner's] crew"). "Crew" are the "ship's company" on board a vessel in navigation. 1 Martin J. Norris, THE LAW OF SEAMEN § 11 (1962).

2. In 1874, Congress amended the Act to more clearly exclude "sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions." Act of June 9, 1874, ch. 260, 18 Stat. 64, 64-65; *see United States v. The Grace Lothrop*, 95 U.S. 527, 532 (1877) (this provision applied to "[all] of the provisions of the original act"). The Act thus freed vessels "making relatively short voyages, with frequent opportunities for reaching ports, from [its] burdensome requirements not then deemed essential to the welfare of seamen employed thereon." *Inter-Island Steam Nav. Co. v. Byrne*, 239 U.S. 459, 462-63 (1915).

3. By the time of the FAA's passage in 1925, Congress had expanded the Act to include "the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel." 46 U.S.C. § 563 (1925); *see* 1 Norris, THE LAW OF SEAMEN § 82. Absent the master or owner's request, the original 1874 exclusions applied. *See* 46 U.S.C. § 544 (1925); *The George B. Ferguson*, 140 F. 955, 955-56 (D. Maine 1905) (coastwise vessels

excluded where seamen "not shipped by a shipping commissioner").

Even so, the Act remained limited to foreign or interstate journeys. "The word 'coastwise,' as used in the statute, mean[t] along that part of the territory of the United States bordering upon and washed by the sea. It d[id] not comprehend inland navigation." *United States v. Bain*, 40 F. 455, 456 (E.D. Wis. 1889); *see also Mahar v. Gartland S.S. Co.*, 154 F.2d 621, 622 (2d Cir. 1946) ("A country's 'coast' ordinarily means those of its borders washed by the sea."); *The Garden City*, 26 F. 766, 773 (S.D.N.Y. 1886) (contrasting "coast waters" to "'inland waters'"); *The New York*, 175 U.S. 187, 193-94 (1899) (same); *To Amend Certain Laws Relating to American Seamen, Hearings before a Subcomm. of the S. Comm. on Commerce*, 71st Cong. 2d. Sess. 58 (1930) (statement of George A. Marr, Secretary of the Lake Carriers' Association) (noting that the Great Lakes trade had operated without commissioner arbitration since 1874).

And in 1925, a State's coastal border ended with the tide waters, at the tidal low-water mark. *See The Abby Dodge*, 223 U.S. 166, 174-75 (1912). The high seas began three geographic miles from the coast line, and everything in between belonged exclusively to the United States. *See Cunard S. S. Co. v. Mellon*, 262 U.S. 100, 122 (1923) (holding that "the territory subject to [U.S.] jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles"); *United States v. California*, 332 U.S. 19, 33 (1947) ("That the political agencies of this

nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact.").

Because of these border rules, when § 1 was enacted, coastwise travel from San Francisco to San Diego, for example, required that a vessel leave California, enter federal water, and then navigate through the high seas—rendering the ship and its crew "engaged in commerce with foreign nations." *Lord v. Steamship Co.*, 102 U.S. 541, 544 (1880); *see Cincinnati, N. O. & T. P. R. Co. v. Commonwealth*, 104 S.W. 394, 395 (Ky. 1907) ("[G]oods were shipped from one point in a [S]tate to another point in the same [S]tate, by means of coastwise navigation on the high seas."). A "coastwise" journey under the Shipping Commissioner Act thus would have involved oceanic transportation between ports in different States, *see The George B. Ferguson*, 140 F. at 955-56, or oceanic travel between ports within the same State whereby the vessel crossed the State's border and traveled through federal waters or the high seas. *See Coastwise Trade*, 11 C.J. 937 (1917) ("trade or intercourse carried on by sea between two ports or places belonging to the same country").

4. In any event, in 1925, sailors on coastwise journeys rarely accessed shipping-commissioner arbitrations, because masters and owners of vessels on short coastal runs "felt that many of the provisions of the Shipping Commissioner's Act were onerous to their trade." 1 Robert Force & Martin J. Norris, THE LAW OF SEAMEN § 14:15 (5th ed. 2025-26). Indeed, "[s]eamen or their attorneys" would "generally keep clear of the Shipping Commissioner as an arbiter,

preferring to bring their causes before an admiralty judge." 1 NORRIS, THE LAW OF SEAMEN § 82.

Accordingly, at the time of the FAA's enactment, no crew on a purely intrastate voyage in intrastate water could have reasonably expected to arbitrate through the shipping-commissioner process. Allowing them to avail themselves of the FAA would therefore not have disrupted any pre-existing scheme.

Railroad Arbitration

1. Railroad arbitrations were similarly limited to workers working on interstate or foreign rail lines. In 1920, Congress enacted the Transportation Act, which established the Railroad Labor Board ("RLB") to resolve employment disputes between "employees" or "subordinate officials" of "carriers" and "carriers." Transportation Act, 1920, ch. 91, § 307, 41 Stat. 456, 470-71.

Title III of the Transportation Act defined "carriers" to include "any carrier by railroad, subject to the Interstate Commerce Act, except a street, interurban, or suburban electric railway not operating as part of a general steam railroad system of transportation." *Id.* § 300(1), 41 Stat. at 469. As relevant here, the Interstate Commerce Act ("ICA") extended to "common carriers" and transportation that was either "wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment." *Id.* § 400(1)(a), 41 Stat. at 474.

2. Under this definition, the RLB lacked jurisdiction over railroad employees who provided private, local transportation and engaged with only local transportation channels and instruments. By 1925,

this Court had repeatedly interpreted the ICA's "by railroad" language to encompass "railroads engaged in hauling passengers or freight 'between [S]tates,' 'between [S]tates and territories,' [and] 'between the United States and foreign countries,'" but not railways providing "local" service. *Omaha & Council Bluffs St. Ry. Co. v. Interstate Com. Comm'n*, 230 U.S. 324, 336 (1913). Congress, the Court recognized, had intended to regulate common carriers, the "railroads proper," but "not those having separate, distinct, and local street lines." *Id.* at 335-36; *see Piedmont & N. Ry. Co. v. Interstate Com. Comm'n*, 286 U.S. 299, 311 (1932) (defining local lines); *see also Bhd. of Locomotive Eng'rs v. Spokane & E. Ry. & Power Co.*, 1 R.L.B. 53, 54, 57-58 (1920) (declining jurisdiction where railroad offered a "local" service, not "general" service).

3. The Court's interpretation of "by railroad" was bolstered by the ICA's express recognition that it did not apply to "the transportation of passengers or property wholly within one State and not shipped to or from a foreign country from or to any place in the United States." Ch. 91, § 400(2)(a), 41 Stat. at 474. In light of this language, by 1925, this Court had repeatedly recognized that the ICA excluded transportation that was "exclusively intrastate." *Houston, E. & W. Tex. Ry. Co.*, 234 U.S. 342, 358 (1914); *see Interstate Com. Comm'n v. Goodrich Transit Co.*, 224 U.S. 194, 207 (1912) ("wholly domestic"); *see generally* 1 MAURICE G. ROBERTS, FEDERAL LIABILITIES OF CARRIERS 411 & n.64 (2d ed. 1929) (collecting cases).

4. This is not to say that the RLB's jurisdiction exactly tracked the ICA's scope. The various provisions defining the ICA's scope and the RLB's

jurisdiction are differently worded, such that the RLB's jurisdiction is narrower. *Compare* § 300(1), (4), 41 Stat. at 469 (defining RLB's jurisdiction) *with id.* §§ 400(1)(a), 402(22) (defining ICA's scope). Congress intended to exclude rail carriers "differing essentially from those long recognized as the objects of national concern and regulation." *Piedmont*, 286 U.S. at 306.

In addition, the ICA encompassed non-rail common carriers (like telegraph operators) and transportation that was "wholly by railroad, or partly by railroad and partly by water." § 400, 41 Stat. at 474. At the time of the FAA's enactment, the RLB *lacked* authority over water (and other non-rail) carriers; its authority extended only to disputes involving a common "carrier by *railroad*." § 300(1), 41 Stat. at 474 (emphasis added).

Finally, unlike the Interstate Commerce Commission, which had broad authority over intrastate railway rates that discriminated against interstate commerce, *see* § 404, 41 Stat. at 479, the RLB's authority was decidedly narrower. *See Texas v. Interstate Com. Comm'n*, 258 U.S. 158, 160-61 (1922). The RLB's authority was statutorily restricted to employment disputes involving the common rail carriers with interstate lines that formed the backbone of interstate commerce.

5. This understanding of the RLB's jurisdiction is consistent with its purpose. Over the course of the late nineteenth and early twentieth century, railroad worker strikes repeatedly paralyzed the national economy. *See* Joshua Bernhardt, THE RAILROAD LABOR BOARD: ITS HISTORY, ACTIVITIES AND ORGANIZATION 7-34 (1923). Congress established the

RLB "to avoid interruptions to commerce." Paul Stephen Dempsey, *Transportation: A Legal History*, 30 TRANSP. L.J. 235, 273 (2003). Congress's concern, however, was only with strikes that substantially interfered with interstate commerce. *See Pa. R.R. Co. v. U.S. R.R. Lab. Bd.*, 261 U.S. 72, 79 (1923) ("It is evident from a review of title 3 of the Transportation Act of 1920 that Congress deems it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes."); *see also* Bernhardt at 41 (noting legislative concern with preventing "strikes or lockouts in interstate commerce"). Strikes among private, intrastate rail workers were beyond the statute's scope.

Because the RLB's arbitration scheme was limited to common carrier railroad employees engaged in interstate transportation, applying the FAA to railroad employees who were engaged in purely private local transportation would not have disrupted the RLB's arbitral scheme.

2. Flowers' Interpretation Tracks Congress's Limited Authority To Regulate Employment Contracts In 1925.

Other historical context—in particular the narrow contemporaneous understanding of Congress's authority to regulate employment contracts—also supports Flowers' reading of § 1. As this Court has recognized, Congress may have limited § 1 to transportation workers "because of Congress' undoubted authority to govern the employment relationships at issue by the enactment of statutes specific to them." *Circuit City*, 532 U.S. at 120-21.

"Congress' undoubted authority," however, extended only to the employment contracts of certain transportation workers.

1. In 1925, regulation of private employment contracts was primarily a "purely state authority." *Hammer v. Dagenhart*, 247 U.S. 251, 276 (1918) (holding Congress lacked authority to regulate hours of child labor "within the [S]tates"). "At that time no one supposed that there was federal power to regulate employment relations in industries producing goods for commerce or industries affecting commerce." Archibald Cox, *Grievance Arbitration in the Federal Courts*, 67 HARV. L. REV. 591, 598 (1954).[3]

2. Congress's authority over employment contracts had been established only for workers engaged in "the use of interstate transportation"—the "transportation among the [S]tates." *Hammer*, 247 U.S. at 271-72; *United Leather Workers' Int'l Union, Loc. Lodge or Union No. 66 v. Herkert & Meisel Trunk Co.*, 265 U.S. 457, 471-72 (1924) (Congress lacked authority where strike did not "directly interfere[] with the interstate transportation"); *Child Lab. Tax Case*, 259 U.S. 20, 38 (1922) (invalidating tax on child labor).

With respect to seamen, by 1925, this Court had held that Congress could regulate employment contracts where "the services contracted for … were to

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[3] States, in contrast, actively regulated employment contracts under their police powers. *See, e.g.*, *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 200 (1917) (collecting cases); *Bunting v. Oregon*, 243 U.S. 426, 434-39 (1917) (upholding Oregon law setting ten-hour maximum day for manufacturing workers); *Holden v. Hardy*, 169 U.S. 366, 397-98 (1898) (upholding Utah law regulating hours of labor for mine workers).

be performed beyond the limits of any single [S]tate, and in an ocean voyage." *Patterson v. Eudora*, 190 U.S. 169, 176 (1903). It had expressly reserved the question whether Congress could regulate "contracts of sailors for services wholly within the [S]tate," and had repeatedly cast doubt on Congress's ability to do so. *Id.* (holding that, "whenever the contract is for employment in commerce, not wholly within the [S]tate, legislation enforcing such restrictions comes within the domain of Congress, which is charged with the duty of protecting foreign and interstate commerce"); *Lord*, 102 U.S. at 544 (Congress could regulate contract for good's carriage from San Francisco to San Diego because it "could not be performed except by going not only out of California, but out of the United States as well," into the high seas).

With respect to railroad employees, in *Howard v. Illinois Central Railroad Co.*, this Court deemed FELA unconstitutional on the ground that it encompassed not only workers engaged in interstate transportation, but also those engaged in purely local transportation, which the Court held Congress could not regulate. 207 U.S. 463, 498 (1908).[4] The Court's examples of FELA's invalidity included: "a railroad engaged in interstate commerce, having a purely local branch operated wholly within a [S]tate" or a railroad

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[4] Flowers does not mean to suggest that FELA's "engaging in commerce" language is relevant to determining § 1's meaning. As explained *infra* at 35-36, the two statutes are too different to draw textual comparisons. Flowers is arguing only that this Court's view that Congress had narrow authority to regulate contracts of employment illuminates Congress's intent in enacting § 1.

having local "shops for repairs, and, it may be, for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses." *Id.*; *see also Ill. Cent. R.R. Co. v. Behrens*, 233 U.S. 473, 478 (1914) (holding FELA inapplicable where employee moved cars "loaded with intrastate freight, from one part of the city to another").[5] Only employees directly engaged with interstate common carriers could constitutionally be covered by FELA. *See, e.g.*, *Second Employers' Liab. Cases*, 223 U.S. 1, 51-52 (1912).

3. Thus, in 1925, the States, not Congress, regulated local transportation workers' employment contracts. *See Legal Restrictions on Hours of Men in the United States*, 28 MONTHLY LAB. REV. at 23-25 (Jan. 1929) (collecting laws). That included the employees of interstate railroads who worked in a purely intrastate capacity. *See, e.g.*, *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 191-92 (1917); *Chi,, Burlington & Quincy R.R. Co. v. Harrington*, 241 U.S. 177, 179-80 (1916). It also included "peddlers"—workers who sold goods to local customers, even when the peddler was employed by and selling on behalf of an out-of-State manufacturer. *See, e.g.*, *Wagner v. City of Covington*, 251 U.S. 95, 99-103 (1919).

* * *

Text, precedent, and history all point to the same conclusion: As a local delivery driver who neither

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[5] Under the revised FELA, this Court continued to recognize that activities "too remote from interstate transportation to be practically a part of it" did not constitute "interstate commerce within the meaning of the employers' liability act." *Shanks v. Delaware, Lackawanna & W. R.R. Co.*, 239 U.S. 556, 560 (1916).

crosses state lines nor plays a direct role in moving goods across state lines, Brock is not a transportation worker engaged in foreign or interstate commerce under § 1. His arbitration agreement is thus enforceable under the FAA.

II. THE TENTH CIRCUIT'S CONTRARY HOLDING IS ERRONEOUS.

The Tenth Circuit's decision below—like the First and Ninth Circuit decisions on which it relied—effectively ignored § 1's text, this Court's § 1 precedents, and the relevant historical context. Instead, the court focused on the transactions that caused the goods to move, Pet. App. 18a, where the goods "come to rest," *id.* at 26a-27a, and old FELA cases. *Id.* at 14a-15a; *see also Waithaka*, 966 F.3d at 26; *Rittmann*, 971 F.3d at 915-17.

The Tenth Circuit viewed the question before it as whether "Brock's intrastate route formed a constituent part of the goods' interstate journey or an entirely separate local transaction." Pet. App. 18a. To answer that question, the court looked at: "(1) the buyer-seller relationship between Flowers and Brock, (2) the buyer-seller relationship between Brock and Brock's customers, and (3) the buyer-seller relationship, if any, between Flowers and Brock's customers." *Id.*

In addition, the court examined whether Flowers exercised enough "control" that Brock's customers were Flowers' "true customers" and whether the goods "come to rest" at the Colorado warehouse or were in a continuous journey to the retailer. *Id.* at 24a-28a. For this analysis, the court considered the financing of Brock's business; the process for ordering baked

goods; Flowers' ability to protect its brand; Flowers' ability to negotiate nationwide pricing with national retailers; the treatment of accounts receivable; and Flowers' security interest in Brock's business. *Id.* at 23a-28a. It even developed diagrams depicting the various transactional relationships. *Id.* at 20a-22a. Based on these factors (and still others), the court concluded that "Brock's intrastate delivery of goods … is not an isolated transaction; instead, his delivery route forms the last leg of an interstate route." *Id.* at 27a. And that was enough, in the court's view, for the § 1 exemption to apply. *See id.* at 29a.

Flouting § 1's text and this Court's § 1 precedent, the Tenth Circuit asked the wrong questions, which led it to the wrong answer—one that dramatically expands § 1's scope and undermines the FAA's purpose.

A. The Tenth Circuit's Analysis Is Inconsistent With § 1's Terms And This Court's § 1 Precedents.

1. As explained above, every word in § 1 makes clear that the exemption's scope turns on the transportation work that a worker performs. "Contracts of *employment*," "class of *workers*," and "engaged" all demonstrate that § 1 is focused on the workers' work. *See supra* at 15-16. *Ejusdem generis* further limits § 1 to transportation workers performing foreign or interstate transportation work. *See supra* at 16-17. And "engaged in" requires that the transportation worker take a direct and active part in moving goods across borders. *See supra* at 17-18.

This Court has repeatedly recognized the same. *See Bissonnette*, 601 U.S. at 253-54; *Saxon*, 596 U.S. at 456; *New Prime*, 586 U.S. at 116. Indeed, while this Court has carefully reserved the question presented, the reasoning underlying its recent § 1 decisions strongly suggests the right answer, and with increasing clarity. *See supra* at 20-21.

The Court could not have been any clearer when it held that "§ 1 says nothing to direct courts to consider the industry of a worker's employer," and that, instead, its "language focuses on the *performance* of work." *Bissonnette*, 601 U.S. at 253-54 (emphasis in original, internal quotation marks and citation omitted). That logic compels the conclusion that factors even further afield from the workers' work—such as a transaction's structure, the relationship between the employer and a third party (its customers), financing terms, and the treatment of accounts receivable—are not relevant to § 1's scope.

2. None of § 1's terms suggests that its scope turns on the factors on which the Tenth Circuit relied. Neither the "buyer" nor the "seller" is referenced in § 1. "Transaction" does not appear in § 1's terms, either. Indeed, § 1's focus cannot be on the *transaction* prompting the goods' interstate movement given the textual differences between FAA § 1 and § 2. *See supra* at 17-18.

3. For similar reasons, nothing in § 1's text suggests that its scope is determined by where the goods "come to rest"—if that is even a meaningful question to ask. *Cf.* Pet. App. 26a; *Rittmann*, 971 F.3d at 915-17. No word in § 1 focuses on the workers' relationship to a good's resting place. To the contrary, the statute's

text is laser focused on the workers' direct and active involvement in the good's border crossing. *See supra* at 19. Here, too, asking whether and where a good comes to rest improperly shifts the § 1 analysis from the worker's work to the underlying transaction, and it means workers performing exactly the same transportation work could be treated differently under the statute—in the absence of any language suggesting that counterintuitive result.

As decisions from the First, Ninth, and Tenth Circuits show, determining where a good comes to rest invites an analysis of the underlying transaction, how the employer's business is structured, the underlying commercial relationships, and potentially even the employer's and buyer's intent. *See, e.g.*, Pet. App. 18a-19a & n.5; *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135, 1137-38 (9th Cir. 2023); *Waithaka*, 966 F.3d at 22-23; *see also Singh v. Uber Techs. Inc.*, 939 F.3d 210, 227–28 (3d Cir. 2019) (inviting consideration of a "wide variety of sources"). It likewise leads to all sorts of inquiries like how finished the good is, *see, e.g.*, *Rittmann*, 971 F.3d at 916-17, whether it will be transformed, *see id.*, and how long the good stops, *see, e.g.*, Pet. App. 26a—questions that do not concern the transportation workers' work.

Such inquiries can be impossible to discern or point in different directions. That is exactly why this Court long ago abandoned the "come to rest" concept. It led to all sorts of "perplexing and costly factual inquiries" that "proved highly vexing in the Commerce Clause context when tried over a hundred years ago." *Rittmann*, 971 F.3d at 921 (Bress, J., dissenting). That complex, ever-shifting and long-abandoned analysis has no place in a threshold inquiry under a

statute designed to promote speedy and efficient dispute resolution.

4. With no hook for its analysis in § 1's text or this Court's § 1 precedent, the Tenth Circuit relied on First and Ninth Circuit cases that, in turn, rely on cases that define FELA's scope, in particular, *Behrens*, 233 U.S. at 473, and *Philadelphia & Reading Railway Co. v. Hancock*, 253 U.S. 284 (1920). *See* Pet. App. 14a-15a (citing *Waithaka*, 966 F.3d at 26, and *Rittmann*, 971 F.3d at 919). All three courts viewed the FELA cases as determinative because FELA uses the phrase "engaging in commerce." *See* Pet. App. 14a-15a; *Rittmann*, 971 F.3d at 912-13; *Waithaka*, 966 F.3d at 19-21.

As an initial matter, however, the First, Ninth, and Tenth Circuits misread those cases. They do not turn on whether a good is being moved as part of a local or interstate *transaction*. They turn on whether the railcar, itself, was on a local or interstate journey. In *Behrens*, the rail cars were moving "from one part of the city to another," rendering them local. 233 U.S. at 478. And in *Hancock*, the "ultimate destination of some of these cars was outside of Pennsylvania," rendering the railcars engaged in interstate commerce. 253 U.S. at 285. Both results are consistent with Flowers' approach.

But more fundamentally, the FELA cases shed no light on the meaning of § 1, because FELA's and § 1's terms and purposes are very different. FELA provides that "'every common carrier by railroad while engaging in commerce between any of the several states'" would be liable to "any" employee injured "'by such carrier in such commerce.'" *Behrens*, 233 U.S. at

477 (citing Ch. 3073, 34 Stat. 232 (1906)). By its terms, FELA's focus is on the *railcar's journey*; the "common carrier" needed to be "engaging in commerce." *Id.* (quoting 45 U.S.C. § 51). "The statute is oriented more around the work of the 'common carrier'" than the worker's work. *Rittmann*, 971 F.3d at 931 (Bress, J., dissenting). Moreover, the "commerce" within FELA's scope was not limited by *ejusdem generis* to transportation; it could potentially be read to encompass the underlying transaction. *Behrens*, 233 U.S. at 477. To top it off, FELA's purpose was "broad" and "remedial." *See Rittmann*, 971 F.3d at 932 (Bress, J., dissenting) (collecting cases); *see also, e.g.*, *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532, 555 (1994).

Section 1 does not share any of these features. Its text focuses on the workers' own engagement in interstate commerce, not Flowers'. And the operation of *ejusdem generis* limits § 1 to interstate transportation work by transportation workers. Section 1's scope, moreover, is "narrow," not "open-ended" or remedial. *Bissonnette*, 601 U.S. at 256 (quoting *Circuit City*, 532 U.S. at 118). In light of these differences, this is an instance where "statutory jurisdictional formulations" do not "have a uniform meaning." *Circuit City*, 532 U.S. at 118 (internal quotation marks and citation omitted).

5. In addition, because the Tenth (and First and Ninth) Circuit's § 1 analysis is "without any guide in the text of § 1," *Bissonnette*, 601 U.S. at 254, it has become awash in judge-made factors. The Tenth Circuit examined Brock's financing and Flowers' accounting, the treatment of spoiled goods, and Flowers' warehousing fees, to name only a few

considerations. *See* Pet. App. 24a-28a. The Ninth Circuit likewise examines "myriad factors, including the perceived 'practical, economic continuity in the generation of goods and services.'" *Nair v. Medline Indus., LP*, 2024 WL 4144070, at *2 (9th Cir. 2024) (R. Nelson, J., concurring) (quoting *Rittmann*, 971 F.3d at 913). The First Circuit has stressed the "nature of the business for which a class of workers perform their activities." *Waithaka*, 966 F.3d at 22. Each court—indeed, each case—seems to rely on the court's "own selection of factors [the court] deems relevant." *Rittmann*, 971 F.3d at 931 (Bress, J., dissenting). That is exactly what this Court condemned in *Bissonnette*. *See* 601 U.S. at 254.

B. The Tenth Circuit's Decision Destroys § 1's Limits And Undermines Its Purpose.

If allowed to stand, the Tenth Circuit's erroneous analysis will unwind the limits on § 1, spawn unwieldy litigation, and convert the threshold question of whether a dispute is arbitrable into a mini-trial requiring discovery. Indeed, that is happening now in the First and Ninth Circuits.

1. If, as the First, Ninth, and Tenth Circuits have held, § 1 exempts workers who move goods that are on an interstate journey, grocery store clerks could be exempt under § 1. Nothing about those courts' rules differentiates yards of local transportation from miles, and Brock's truck would be deemed an instrument of interstate commerce—the unloading of which could arguably trigger the § 1 exemption under *Saxon*. In addition, the retailer's shelves are arguably the baked goods' final resting place, meaning a clerk stocking

the shelves could potentially be engaged in the goods' interstate journey. Given the rise of ship-from-store retail models for fulfilling online orders, vast swaths of retail workers could fall within the exemption. *See, e.g.*, A. Bayram & B. Cesaret, *Order Fulfillment Policies for Ship-from-Store Implementation in Omni-channel Retailing*, 294 EUR. J. OP. RES. 987, 989 (2021).

2. Moreover, the lower courts will be flooded with litigation over § 1's scope under the Tenth Circuit's approach. The courts will have to determine the various customer relationships, when an employer exercises control over third-party transactions, and when a good's interstate journey begins and ends. These questions are not easy to answer. *See Rittmann*, 971 F.3d 930-31 (Bress, J., dissenting) (discussing at length the workability problems with a goods-focused approach to § 1). How, for example, is a court to determine whether a baked-goods manufacturer's "real" customers are the individuals who take title from the manufacturer to its products, the retailers who sell them to the public, or the consumers who ultimately buy and eat the baked goods? Does a good's interstate journey start when it is ordered or when its movement begins? Does a good's interstate journey end if it sits in a warehouse for a few hours? A few days? A full year?

The answers to these questions only spark more questions. For example, the Tenth Circuit suggested that the baked goods' interstate journey began when the products were *ordered* (not when their transportation began). *See* Pet. App. 28a. Does that mean that the bakery workers who package goods for shipment also fall within § 1? Or, if the baked goods

are physically moved during the post-order production process, do workers who run the conveyor belt fall within § 1? Nothing in § 1's text or this Court's § 1 precedent contemplates these questions, let alone provides their answers.

3. The Court need not take Flowers at its word about the deleterious consequences of the Tenth Circuit's approach. It need only observe what is happening in the Circuits that have not enforced § 1's narrow reach. An array of employers in retail,[6] energy,[7] and banking,[8] to name a few, are actively litigating § 1 questions, including in the most marginal cases. Newspaper delivery is no longer merely a hypothetical question. *See, e.g.*, *Reyes v. Hearst Comm'cns, Inc.*, 2022 WL 2235793, at *1 (9th Cir. June 22, 2022) (affirming application of exemption to newspaper employee who delivered

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[6] *See Lopez v. Nordstrom, Inc.*, 2024 WL 3464170, at *1 (C.D. Cal. Feb. 12, 2024); *Perez v. Kohl's Inc.*, 2024 WL 5701892, at *2 n.1 (C.D. Cal. Feb. 26, 2024); *Wyatt v. Lowe's Home Ctrs., LLC*, 2025 WL 18686, at *1 (N.D. Okla. Jan. 2, 2025); *Wilson v. Get It Now, LLC*, 2025 WL 2304686, at *3 (D. Minn. Aug. 11, 2025).

[7] *See, e.g.*, *Brashear v. Halliburton Energy Servs., Inc.*, 2020 WL 4596116, at *1 (E.D. Cal. Aug. 11, 2020); *Cottrill v. MDM Servs. Corp.*, 2022 WL 19829437, at *1 (C.D. Cal. Jan. 20, 2022); *Whitman v. DCP Midstream*, 2022 WL 1836733, at *1 (N.D. Okla. June 3, 2022); *Wolford v. Coal Co. LLC*, 764 F. Supp. 3d 329, 332 (W.D. Va. 2025); *Energy Transfer LP v. Moock*, 2025 WL 1559841, at *1 (Tex. Ct. App. June 3, 2025).

[8] *See, e.g.*, *Collazos v. Garda CL Atl., Inc.*, 666 F. Supp. 3d 249, 262 (E.D.N.Y. 2023); *Miller v. Citibank, N.A.*, 2023 WL 6910711, at *5-6 (D. Md. Oct. 18, 2023); *see also Scott v. Loomis Armored US, LLC*, 2021 WL 6136181, at *1 (E.D. Cal. Dec. 29, 2021); *Ligorria v. Loomis Armored US LLC*, 2023 WL 3272397, at *3 (C.D. Cal. Feb. 28, 2023).

papers shipped to him). Salespeople who locally deliver promotional materials can be exempt from arbitration under § 1. *Fraga v. Premium Retail Serv., Inc.*, 61 F.4th 228, 230, 236-37, 242 (1st Cir. 2023) (remanding for further factfinding in case where saleswoman locally delivered promotional materials that had been mailed to her). And workers who merely move goods inside of a warehouse are, too. *See Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152, 1162 (9th Cir. 2024).

What the Court has called § 1's "appropriately narrow scope," *Bissonnette*, 601 U.S. at 256 (internal quotation marks removed), is giving way to a broad new construction that encompasses all sorts of workers engaged in purely local transportation.

4. At the same time, the § 1 inquiry—a threshold question governing the applicability of a statute designed to promote speedy and efficient dispute resolution—has devolved into the "[e]xtensive discovery" and "[m]ini-trials" this Court sought to guard against in *Bissonnette*, 601 U.S. at 254. Courts are now ordering discovery into the good's journey, the underlying transactions, the commercial relationships among the various parties, the employer's intent, and the "control" an employer exercises over an employee.[9] And litigation about

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[9] *See e.g.*, *Singh*, 939 F.3d at 226-28; *Aleksanian v. Uber Techs., Inc.*, 2023 WL 7537627, at *3-4 (2d Cir. Nov. 14, 2023); *Bissonnette v. LePage Bakeries Park St., LLC*, 123 F.4th 103, 106-07 (2d Cir. 2024); *Gonzales v. Lyft, Inc.*, 2021 WL 303024, at *5 (D.N.J. Jan. 29, 2021); *Golightly v. Uber Techs., Inc.*, 2021 WL 3539146, at *1 (S.D.N.Y. Aug. 11, 2021); *Coleman v. Sys. One Hldgs., LLC*, 2022 WL 22869544, at *2 (W.D. Pa. Feb. 11, 2022);

whether § 1 applies is lasting *years* before arbitration commences. *See, e.g.*, *Singh*, 67 F.4th at 554 (nearly seven years before arbitration compelled). This case, for example, was filed in September 2022. *See* Pet. App. 40a.

"Jurisdictional rules," however, "should be 'clear and easy to apply.'" *Axon Enters., Inc. v. FTC*, 598 U.S. 175, 212 (2023) (Gorsuch, J., concurring) (quoting *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 25 (2017)). That is particularly true for arbitration; "[p]arties generally favor arbitration precisely because of the economics of dispute resolution." *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009). In the circuits where it has been in force, by contrast, the Tenth Circuit's rule has been "unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it." *Allied-Bruce*, 513 U.S. at 275.

This Court should "decline to interpret the [FAA] as requiring such a difficult line-drawing exercise." *Facebook, Inc. v. Duguid*, 592 U.S. 395, 406 n.6 (2021); *see Bissonnette*, 601 U.S. at 254; *Circuit City*, 532 U.S. at 123. Congress drafted § 1 to be narrow, easily understood, and straightforward to apply. The Court should restore § 1 to its intended scope and hold that active and direct involvement in cross-border transportation is required.

Rietheimer v. United Parcel Serv., Inc., 2023 WL 11952209, at *2 (D. Colo. Sept. 28, 2023); *Williams v. Revel Rideshare*, 2025 WL 1663625, at *7 (E.D.N.Y. June 11, 2025); *Rodriguez v. Inter-Con Sec. Sys., Inc.*, 2025 WL 1779166, at *1 (E.D.N.Y. June 27, 2025).

CONCLUSION

The judgment of the Court of Appeals for the Tenth Circuit should be reversed.

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