

No. 24-935

IN THE
Supreme Court of the United States

FLOWERS FOODS, et al.,

Petitioners,

v.

ANGELO BROCK,

Respondent.

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

**BRIEF OF AMICUS CURIAE PIONEER
NEW ENGLAND LEGAL FOUNDATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE

PioneerLegal, LLC (PioneerLegal), doing business as Pioneer New England Legal Foundation (Pioneer NELF), is a nonprofit, nonpartisan legal research and litigation entity.¹ PioneerLegal began operating under its new name, Pioneer NELF, after forming a strategic alliance with the New England Legal Foundation (NELF) in May 2025. Pioneer NELF seeks to continue its own work, as well as NELF's mission.

PioneerLegal was founded by its nonprofit, nonpartisan member, the Pioneer Institute, Inc., in 2022, to promote open and accountable government, economic opportunity, freedom of speech, freedom of association, and education opportunities across the country, through legal action and public education.

NELF has been a nonprofit, public interest law foundation, which was incorporated in Massachusetts in 1977. NELF's members and supporters have included large and small businesses in New England, other business and nonprofit organizations, law firms, and individuals, all of whom believe in NELF's mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic and property rights.

¹ Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for a party authored this brief, in whole or in part, and that no person or entity, other than amicus, made a monetary contribution to the preparation or submission of the brief.

Pioneer NELF is committed to the enforcement of arbitration agreements according to their terms, as mandated by the Federal Arbitration Act (FAA) and foundational principles of contract law. Amicus is also committed to the related principle that the statutory exemption to this broad Congressional mandate should be interpreted narrowly, consistently with the exemption’s plain language and this Court’s interpretive precedent.

NELF has appeared frequently before this Court in other cases arising under the FAA.² Moreover, the Court’s decision in this case will also decide the validity of *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020), which is controlling precedent in Pioneer NELF’s immediate area of geographical concern, and which amicus believes was wrongly decided. Accordingly, Pioneer NELF believes that its brief will assist the Court in deciding the issue presented in this case.

SUMMARY OF ARGUMENT

Section 1 of the Federal Arbitration Act (FAA) exempts “contracts of employment of seamen, railroad employees, or any other class of workers

² See, e.g., *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019); *New Prime Inc. v. Oliveira*, 586 U.S. 105 (2019); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497 (2018); *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013); *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

engaged in foreign or interstate commerce.” The exemption’s residual phrase is limited to “transportation workers,” defined as those workers who play a direct and necessary role in the free flow of goods across borders. This exacting definition is compelled by § 1’s idiosyncratic language, and by its placement in an otherwise broad statute mandating the enforcement of arbitration agreements according to their terms.

The respondent is not exempt from the FAA’s coverage because he merely delivers to local customers the goods that *others* have moved across borders. The out-of-state origins of the goods have no bearing on his purely intrastate delivery of those goods. Section 1’s plain language turns on what the worker does with the goods, not where the goods have been.

Nor does the respondent unload the goods when they arrive from out-of-state vehicles. His work is not that of the airline workers in *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022), who are exempt because they load and unload cargo on and off planes in interstate travel. Unlike those workers, the respondent is not engaged with either the channels or the *instrumentalities* of interstate commerce. Moreover, the Court in *Saxon* identified a textual basis in § 1 for exempting those workers who load and unload cargo from the instrumentalities of interstate and foreign commerce.

However, § 1 provides no textual basis for exempting a transporter of goods who neither crosses borders nor engages directly with the

instrumentalities of interstate commerce. In particular, § 1 does not support the conclusion, reached by the Tenth Circuit in this case, and by certain sister circuits in other cases, that local delivery drivers are exempt from the FAA when, in a court's estimation, the drivers serve as the intended "last leg" of "one continuous interstate journey" of the goods, via an "integrated distribution chain," from the goods' state of origin to their place of "permanent rest," with the final purchaser in another state. The basic problem with this "continuous interstate journey" test is that it is not the language that § 1 uses.

Section 1 does not focus on the interstate "journey" of the goods in the abstract. Instead, § 1 focuses narrowly on what each worker, acting by herself, actually does with the goods. Under § 1, a worker's local delivery of the goods remains unchanged, whether or not she receives the goods as part of a larger business transaction connecting the out-of-state seller to the local end-purchaser.

The lower court misinterpreted § 1 when it relied on earlier opinions of this Court that addressed the unrelated issue of whether the Commerce Clause permitted the regulation of the intrastate leg of an interstate transaction, under certain remedial statutes. But that broad constitutional question has nothing to do with the narrow statutory question under § 1 of the FAA. Section 1 focuses on the *worker*, not the underlying *transaction*, and it asks whether the worker has "engaged in . . . commerce" sufficiently to warrant an exemption from the FAA's expansive coverage. This circumscribed statutory inquiry falls

far short of measuring the constitutional limits of Congress’s power to regulate interstate commerce.

ARGUMENT

I. SECTION 1 OF THE FEDERAL ARBITRATION ACT EXEMPTS ONLY THOSE WORKERS WHO TRANSPORT GOODS ACROSS BORDERS OR WHO ENGAGE DIRECTLY WITH AN INSTRUMENTALITY OF INTERSTATE COMMERCE.

A. Section 1’s Idiosyncratic Language, And Its Placement In An Otherwise Broad Statute, Mandate A Narrow Definition Of An Exempted “Transportation Worker.”

The issue in this case is whether a local distributor of goods that arrive from another state qualifies for the Federal Arbitration Act’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 (emphasis added). It is, by now, received wisdom that this residual phrase “is limited to transportation workers, defined . . . as those workers actually engaged in the movement of goods in interstate commerce.” *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 112 (2001) (cleaned up). *See also Bissonette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 255 (2024) (“The . . . natural inference . . . is that ‘seamen’ and ‘railroad employees’ share the employment characteristic of being transportation workers.”).

To qualify as a transportation worker who is exempt from the FAA’s coverage, a deliverer of goods “must be *actively engaged* in [the] transportation of those goods *across borders* via the channels of foreign or interstate commerce.” *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (airline employees who load and unload cargo on and off planes traveling in interstate commerce are exempt from FAA) (cleaned up) (emphasis added). *See also id.* at 457 (“[A]ny class of workers *directly involved* in transporting goods across state or international borders falls within § 1’s exemption.”) (emphasis added). Put otherwise, § 1 requires that “any exempt worker must at least play *a direct and necessary* role in the free flow of goods across borders.” *Bissonnette*, 601 U.S. at 256 (cleaned up) (emphasis added).

This exacting definition is compelled by § 1’s idiosyncratic language (i.e., the listing of “seamen” and “railroad employees” immediately preceding the residual phrase, and the use of the specific formulation, “workers *engaged in . . .* commerce,” within that phrase), and by the exemption’s placement in an otherwise *broad* statute that mandates, in § 2, the enforcement of arbitration agreements according to their terms, to overcome historical judicial hostility to arbitration.³ In short,

³ In particular, the Court in *Circuit City* explained that § 1’s residual phrase, “any other class of workers engaged in foreign or interstate commerce,” should be interpreted narrowly, for three essential reasons: (1) to give effect to the “seamen” and “railroad employees” that precede the residual phrase, by limiting the meaning of that residual phrase to comparable transportation workers, under the rule of *ejusdem generis*; *id.*, 532 U.S. at 114-15; (2) to give effect to Congress’s use of the specific term “engaged in commerce” in § 1’s residual phrase, as

this “transportation worker” inquiry “limit[s] § 1 to its appropriately narrow scope.” *Bissonnette*, 601 U.S. at 256 (cleaned up). *See also Circuit City*, 532 U.S. at 118, 119 (§ 1 “[must] be afforded a narrow construction” and a “precise reading”).

B. Section 1 Does Not Apply To A Worker Who, Like The Respondent, Delivers To Local Customers The Goods That Others Have Moved Across Borders.

The respondent, located in Colorado, is the owner and operator of an independent distributor company for the petitioner, a large national commercial bakery. Appendix to Petition for Certiorari (App.) 1a, 4a. According to the contractual arrangement between the respondent’s company and the petitioner baking company, the respondent purchases goods from the company for resale and delivery to local retail store customers, all located in Colorado. App. 4a-5a. The baking company delivers the goods, mostly from out of state, to a designated Colorado warehouse. The *baking company*, not the respondent, unloads the goods when they arrive in Colorado and stores them in the warehouse. App. 5a. Within a day after delivery, the respondent loads the goods onto his truck and delivers them to his local

opposed to its use of the far broader term “involving commerce,” in § 2, which indicates Congress’s intent to regulate to the full extent of its powers under the Commerce Clause, *id.* at 115-16, 118; and (3) to recognize that “[§ 1] is contained in a statute that seeks broadly to overcome judicial hostility to arbitration agreements.” *Id.* at 118.

retail customers. *Id.*

The respondent is not exempt from the FAA’s coverage because he belongs to a “class of workers [that] carries out duties [far] removed from the channels of interstate commerce or the actual crossing of borders.” *Saxon*, 596 U.S. at 457 n.2. First and foremost, *other* workers have already “transport[ed] . . . those goods across borders via the channels of foreign or interstate commerce.” *Saxon*, 596 U.S. at 457, 458. The respondent merely retrieves the goods at a local warehouse and delivers them to local retail customers. The out-of-state origins of the goods have no bearing on his purely intrastate delivery of those goods to local customers. The respondent’s work would remain the same if, instead of an out-of-state supplier of the goods, a local supplier had stored the same goods in the same warehouse for the respondent to retrieve and deliver to the same local customers.

This narrow focus on what the worker actually does with the goods, to the exclusion of the goods’ travel history, is mandated by § 1’s plain language, which turns on “what the worker does” with the goods, not “where the goods have been.” *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.) (local food-delivery drivers not exempt under FAA). *See also Saxon*, 596 U.S. at 456 (“The word ‘workers’ directs the interpreter’s attention to the *performance* of work.”) (cleaned up).

The respondent’s “performance of work” is the local delivery of goods, and that work remains unchanged, regardless of the source of those goods.

Moreover, the purely intrastate nature of his work is definitionally distinct from the robust border-crossing activity of seamen and railroad employees that § 1 demands. “[S]eamen and railroad employees [are] transportation workers who played a necessary role in the free flow of goods” across borders. *Bissonette*, 601 U.S. at 253 (cleaned up). *See also Wallace*, 970 F.3d at 802 (“[T]he workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders. . . . That, after all, is what it means to be a transportation worker who performs work analogous to that of seamen and railroad employees.”).

Nor does the respondent unload the goods when they arrive from out-of-state vehicles. As such, he is not engaged with either the channels or the *instrumentalities* of interstate commerce.⁴ Contrast the respondent’s work with that of “airline employees who physically load and unload cargo on and off planes traveling in interstate commerce.” *Saxon*, 596 U.S. at 457. Unlike the respondent, those workers are exempt from the FAA because their work requires them to engage directly with a prominent instrumentality of interstate and foreign commerce. Their work forms a direct and necessary link in the transportation of cargo across borders. Consequently, those airline employees are, “as a practical matter, part of the interstate transportation of goods.” *Id.* at 458.

⁴ *See United States v. Lopez*, 514 U.S. 549, 558–59 (1995) (“[W]e have identified three broad categories of activity that Congress may regulate under its commerce power[:] . . . [1] the channels of interstate commerce[;] . . . [2] the instrumentalities of interstate commerce, or persons or *things* in interstate

Indeed, the Court in *Saxon* identified a textual basis in § 1 for exempting those workers who physically load and unload cargo from the instrumentalities of interstate and foreign commerce. *See id.* at 459 (discussing § 1’s definition of “maritime transactions” as including “agreements relating to *wharfage* [i.e., the loading and unloading of cargo on and off a vessel] . . . or any other matters in *foreign commerce*”) (emphasis added). However, § 1 provides no textual basis for exempting a transporter of goods who neither crosses borders nor engages directly with the instrumentalities of interstate commerce.

C. Section 1 Does Not Support The Conclusion, Reached By The Lower Court And Certain Sister Circuits, That Local Delivery Drivers Are Exempt When They Are The Intended “Last Leg” Of A “Continuous Interstate Journey” Of The Goods.

Section 1 of the FAA does not support the conclusion, reached by the Tenth Circuit in this case, and by certain sister circuits in other cases, that local delivery drivers are exempt from the FAA’s coverage when, in a court’s estimation, the drivers serve as the intended “last leg” of “one continuous interstate journey” of the goods, via an “integrated distribution chain,” from the goods’ state of origin to their place of “permanent rest,” with the end customer in another state. App. 15a, 19a, 22a, 26a *See also id.* 13a, 18a

commerce[; and] . . . [3] those activities that substantially affect interstate commerce[.]”) (emphasis added).

(“The First and Ninth Circuits have concluded that last-mile delivery drivers--drivers who make the last intrastate leg of an interstate delivery route--are directly engaged in interstate commerce. . . . We find the First and Ninth Circuits’ cases on this issue persuasive and adopt their reasoning as guideposts for our own analysis.”) (citing, *inter alia*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020); and *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020)). These courts draw a distinction between “wholly intrastate trips and intrastate trips occurring as part of an interstate journey,” App. 16a, based on whether there is an underlying business arrangement or transaction that connects the original seller of the goods to the final purchaser.

The basic problem with this “continuous interstate journey” test is that it “is not the language the statute uses.” *Rittmann*, 971 F.3d at 927 (Bress, J., dissenting). Section 1 does not focus on the interstate “journey” of the goods in the abstract. Instead, § 1 focuses narrowly on what each worker, acting by herself, actually does with the goods. Does she move the goods across borders or engage directly with an instrumentality of interstate commerce, akin to the work of seamen and railroad employees? The Tenth Circuit should have confined its opinion to answering those discrete and textually grounded questions.

Instead, the lower court asked, “without any guide in the text of § 1 or our [FAA] precedents,” *Bissonnette*, 601 U.S. at 254, whether a worker’s local delivery of the goods is the final link in an “integrated distribution chain.” App. 22a. But § 1 does not ask

that question. The exemption is not concerned with “where the goods have been” before the worker receives them. *Wallace*, 970 F.3d at 802. Instead, § 1 is concerned only with what the worker actually does with the goods, regardless of the business transaction that brought the goods to her. After all, “[t]he word ‘workers’ directs the interpreter’s attention to the *performance* of work.” *Saxon*, 596 U.S. at 456 (emphasis in original) (cleaned up).

Under § 1, then, a worker’s local delivery of the goods remains unchanged, whether or not she receives the goods as part of a larger business transaction connecting the out-of-state seller to the local retail purchaser. “[Section] 1 asks whether a person is a ‘transportation worker,’ not *for whom* the worker undertakes her transportation work.” *Bissonette*, 601 U.S. at 251 (emphasis in original) (cleaned up). Therefore, § 1 should restrict a court’s inquiry to what the worker does with the goods, and it should likewise preclude consideration of any larger transaction created by the business “*for whom* the worker undertakes her transportation work.” *Id.*

D. The Lower Court Mistakenly Relied On Earlier Opinions Of This Court That Addressed The Unrelated Issue Of Whether The Commerce Clause Permitted The Regulation Of The Intrastate Leg Of An Interstate Transaction, Under Other Federal Statutes.

The Tenth Circuit, in following the decisions of the First and Ninth Circuits, misinterpreted § 1 when

it relied on earlier opinions of this Court that addressed the unrelated issue of whether the Commerce Clause permitted the regulation of the intrastate leg of an interstate transaction, under certain remedial statutes. *See* App. 16a-18a (Tenth Circuit adopting First and Ninth Circuit’s reliance on *United States v. Yellow Cab Co.*, 332 U.S. 218, 228 (1947) (certain intrastate taxi rides were “a part of the stream of interstate commerce,” and were thus subject to potential Sherman Act liability, while other rides were not, based on whether rides were pre-arranged leg of interstate rail trips), *overruled on other grounds by Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752 (1984); App. 15a (Tenth Circuit discussing Ninth Circuit’s reliance on *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 543 (1935) (“Neither the slaughtering [of poultry from another state] nor the [subsequent local] sales by [slaughterhouse workers] were transactions in interstate commerce,” under then-National Industrial Recovery Act (NIRA), because livestock “had come to a permanent rest” at slaughterhouse). The question before the Court in those cases was essentially whether the intrastate leg of a transaction was sufficiently connected to the interstate legs of that transaction to satisfy the Commerce Clause. In short, the Court was deciding the outer limits of Congress’s Article I powers under the Commerce Clause.

But that broad constitutional question has nothing to do with the narrow statutory question under § 1 of the FAA. Section 1 focuses on the *worker*, not the underlying *transaction*. And it asks whether that worker has “engaged in . . . commerce,” akin to the work of seamen or railroad employees, to warrant an exemption from the FAA’s expansive coverage. This circumscribed statutory inquiry falls far short of measuring the constitutional limits of Congress’s power to regulate interstate commerce.

Consistent with this crucial analytical distinction, the statutes at issue in the Court’s earlier cases asked broadly whether a transaction “affected,” “restrained,” or “monopolize[d] any part of” interstate commerce. See *Yellow Cab*, 332 U.S. at 225 (quoting §§ 1 and 2 of Sherman Act); *Schechter Poultry*, 295 U.S. at 542 (quoting enforcement provision of NIRA). As the Court has explained, “[m]ore open-ended formulations like ‘affecting’ or ‘involving’ commerce . . . signal congressional intent to regulate to the *outer limits* of authority under the Commerce Clause.” *Saxon*, 596 U.S. at 458 (cleaned up) (emphasis added).

Those broad formulations contrast sharply with § 1’s use of the more restricted term, “engaged in . . . commerce,” not to mention the further limitation of that term by the enumeration of seamen and railroad employees that precedes it. “By contrast, Congress used a narrower phrase--‘*engaged in commerce*’--when it wanted to regulate short of those limits.” *Id.* (cleaned up) (emphasis added).

In truth, the Tenth Circuit and its sister circuits have lost sight of this Court’s instruction, in

Circuit City, to avoid a misplaced reliance on inapposite caselaw under the Commerce Clause when interpreting the unique text and context of the FAA's exemption:

The judicial task in marking out the extent to which Congress has exercised its constitutional power over commerce is not that of devising an abstract formula. . . . We must, of course, construe the 'engaged in commerce' language in the FAA with reference to the statutory *context* in which it is found and in a manner consistent with the FAA's *purpose*.

Circuit City, 532 U.S. at 118 (emphasis added).

CONCLUSION

For the reasons stated above, amicus respectfully requests that this Court reverse the judgment of the Tenth Circuit.

Respectfully submitted,

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