No. 24-935

IN THE

Supreme Court of the United States

FLOWER FOODS, INC., *et al.*,

Petitioners,

v.

ANGELO BROCK,

Respondent.

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

BRIEF OF MENZIES AVIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CHRISTOPHER WARD
Counsel of Record
FOLEY & LARDNER LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071
(213) 972-4500
cward@foley.com

JOHN FITZGERALD
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202

Counsel for Amicus Curiae
Menzies Aviation, Inc.

December 11, 2025

388412

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Statutes

Other Authorities

INTEREST OF THE *AMICUS CURIAE*[1]

Menzies Aviation, Inc. is the privately-held corporate US parent of the Menzies Aviation enterprise, an airline service provider supplying ground handling support to passenger and commercial cargo airlines throughout the United States. The enterprise services its airline customers through five operating subsidiaries, each focused on a distinct aspect of ground handling:

- Menzies Aviation (USA), Inc., which performs: (i) in-terminal services such as customer service support with passenger ticketing, check-in, boarding and deplaning; and (2) ramp services such as aircraft marshaling, baggage loading and unloading, interior aircraft cabin cleaning between flights, lavatory cleaning, and other related services;

- Simplicity Ground Services, LLC, which provides services similar to Menzies Aviation (USA), Inc. but primarily at regional airports throughout the interior of the United States;

- Aeroground, Inc., which operates within airlines' cargo warehouses at major international freight airports performing cargo security screening, assembly, inventory, and break-down services;

---

1. No counsel for a party authored this brief in whole or in part, and no party or counsel other than *amicus curiae* and its counsel made a monetary contribution to fund preparation or submission of this brief.

- Aircraft Service International, Inc., which (i) operates and maintains airline-owned fuel storage and processing facilities and airport underground hydrant infrastructure; and (ii) performs into-plane fuel pumping using (a) an airport's hydrant systems and gate-based fuel carts, and/or (b) a fleet of tanker vehicles; and

- Menzies Aviation (Airport Services), Inc., which primarily provides in-terminal wheelchair services for passengers needing additional assistance moving through airport terminals and boarding and deplaning from aircraft.

Several of these entities employ teams of mechanics to maintain the machinery necessary to perform operations such as forklifts, belt loaders, push-backs, baggage carts, fueling trucks and related equipment. They also employ teams to provide training and perform safety functions, and office-based personnel to perform functions such as dispatch, paperwork (such as bills of lading and fueling load reconciliation), recruiting, human resources, finance, and other administrative support work.

Petitioners correctly articulate that lower courts have applied the Federal Arbitration Act's § 1 "transportation worker" exemption expansively notwithstanding this Court's instruction in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001) that it requires narrow application and the precise, work-focused guidance of *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022) and *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246 (2024). As Petitioners note, lower courts are adopting various "judge-made, nonexclusive, multi-factor balancing test[s]"

and examining "a dizzying and ever-expanding array of considerations to assess whether § 1 applies," undermining the FAA's goals and fostering litigation from a statute that seeks to avoid it. Pet. Br. 3, 14. This is resulting in expansive, scattershot application of the residual clause based on each court's "own selection of factors [the court] deems relevant." *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 931 (9th Cir. 2020) (Bress, J., dissenting).

Like Petitioners, the Menzies Aviation enterprise has been directly impacted by lower courts' inconsistent application and expansion of the transportation worker exemption following *Saxon*. Three district courts and the Ninth Circuit have each invented their own analytical tests to apply the transportation worker exemption to classes of workers that do not transport goods at all but have some place within the "bigger picture" of interstate transportation. *See Lopez v. Aircraft Serv. Int'l, Inc.*, 107 F.4th 1096 (9th Cir. 2024) (applying the exemption to workers who do not transport goods nor cross borders but are a "vital component" to the larger transportation process), *cert. denied*, 145 S. Ct. 1063 (2025); *Joyner v. Frontier Airlines, Inc.*, No. 24-CV-01672-SKC-TPO, 2025 WL 1503141 (D. Colo. May 19, 2025) (applying the exemption to customer service personnel who act as "gatekeepers" to passengers transporting their own baggage); *Amaya v. Menzies Aviation (USA), Inc.*, No. 22-CV-05915-HDV-MAR, 2025 WL 947132 (C.D. Cal. Mar. 24, 2025) (applying the exemption to every class of workers within lines of business without regard for each position's work); *Lopez v. Aircraft Serv. Int'l, Inc.*, No. CV 21-7108-DMG (Ex), 2022 WL 18232726 (C.D. Cal. Dec. 9, 2022) (applying the exemption to aircraft fuelers because they work in close proximity "both physically and temporally to the actual movement of goods").

While Petitioners have correctly identified that lower courts are running afoul of this Court's precedents by inventing their own analyses, the Question Presented leaves open substantial risk that lower courts will continue in these errors if this Court's resolution of this case does not address the full scope of the post-*Saxon* jurisprudence vis-à-vis the exemption. By asking whether workers "who do not transport the goods across borders *nor interact with vehicles* that cross borders" are transportation workers, Pet. Br. i (emphasis supplied), Petitioners have identified how lower courts are also erring with respect to the larger issue of what it means under *Saxon* to "directly," "physically," and "actually" engage in the transportation of interstate goods as opposed to only impacting the larger process of interstate transportation. This notion of "interacting with vehicles" as entrée to residual clause application is broader than what *Saxon*'s precise language and *Bissonnette*'s clear rejection of an industry-based approach permit, and it is important this Court address the errors of lower courts across the entirety of the exemption, not merely with respect to its geographic aspects.

Menzies Aviation and thousands of other businesses connected to the process and channels of interstate transportation, as well as the myriad classes of workers they employ, thus have a substantial interest in how this Court revisits and gives guidance on the residual clause where Petitioners have shown lower courts are not giving it a narrow construction, resulting in more, not less, FAA litigation. While analyzing § 1 within an "interstate/intrastate" context, how the Court considers the arguments and renders its opinion is a much-needed opportunity to curtail the misapplication of *Saxon* and rein

in lower courts' expansion of the narrow transportation worker exemption across all its aspects, not merely within the interstate/intrastate dichotomy.

SUMMARY OF THE ARGUMENT

Across three consistent opinions in *Circuit City*, *Saxon* and *Bissonnette*, this Court has made clear that the "transportation worker" exemption set forth in FAA § 1's residual clause demands narrow application, and in *Saxon*, the Court seemingly established an easy-to-apply analytical framework through clear, precise, and limiting language. In plain terms, courts only look at what the class of workers at issue actually does without regard to employer industry or other contextual factors, and unless those workers are "actively engaged" through "direct and necessary involvement" by "physically" and "frequently" moving goods interstate, they are not transportation workers and FAA § 2's expansive reach applies.

Petitioners persuasively demonstrate how, notwithstanding this Court's clear precedents, many lower courts are giving impermissibly broad interpretations to the residual clause's "foreign or interstate commerce" language to apply the exemption beyond its narrow contours. In so doing, they are creating rules looking at "transactions" and the "big picture" of interstate transportation. But the errors some lower courts have recently committed go beyond an "interstate/intrastate" dichotomy, reaching to the broader question of what it means to be a "transportation worker" irrespective of the worker's geographic movements. Lower courts are muddying the waters and applying the exemption to classes of workers who never transport anything through a channel of interstate commerce but

impact the process of transportation using imprecise and subjective concepts like (i) working in close physical and temporal proximity to transportation, (ii) performing work that is a "vital component" of a vehicle's ability to move interstate, or (iii) acting in a "gatekeeper function" to others' interstate movement of their belongings. Such nebulous "bigger picture" approaches, if left unchecked, threaten not merely inconsistent results across jurisdictions, but still more residual clause litigation that has necessitated this Court's attention now three times in six years.

If the Court resolves this case only by addressing the "interstate/intrastate" ways in which lower courts are misapplying § 1, or if the Court leaves open the notion of "interacting with vehicles" as an entrée to residual clause application, the tide of litigation will continue rising and still more subjective and dissonant lower court rules will emerge. This Court should therefore reverse the judgment of the Tenth Circuit, but in so doing, it should once and for all reiterate to lower courts what it means to be a "transportation worker" in a way that addresses both the worker's geographic movements and what their work must be irrespective of such movement. Transportation workers are only those classes of workers whose jobs require them to actively and directly move goods or passengers cross-border as measured by: (i) themselves frequently transporting passengers or goods on interstate vehicles across a border; (ii) frequently loading goods onto vehicles that will cross a border as part of the most immediate next part of their journey; and/or (iii) frequently unloading goods from vehicles that have crossed a border as part of the most recent part of their journey. If the work performed by the class of workers at issue is anything

less than this practical and unambiguous articulation of what *Saxon* says, then FAA § 2 applies.

ARGUMENT

I. THIS COURT HAS REPEATEDLY DIRECTED THAT LOWER COURTS MUST APPLY THE TRANSPORTATION WORKER EXEMPTION NARROWLY ACROSS ALL ITS ASPECTS, NOT MERELY ITS "INTERSTATE/INTRASTATE" ELEMENTS

In *Circuit City*, this Court emphasized that the FAA's statutory language "compel[s] that the § 1 exclusion be afforded a narrow construction" and thus only covers "transportation workers." 532 U.S. at 118-19. In this first interpretation of the residual clause, *Circuit City* thus makes plain that § 1 demands that courts take a non-expansive approach to application of the exemption, confining it only to those who qualify, under a narrow understanding, as "transportation workers." *Id.*

Several terms ago, this Court established how courts must determine who qualifies as a "transportation worker" pursuant to *Circuit City*'s requirement of narrow construction of the residual clause. In *Saxon*, the Court set forth the following two-step, multi-factor framework: a court must (i) first determine the "class of workers" at issue, and then (ii) determine whether that class of workers is "engaged in foreign or interstate commerce" under the FAA. 596 U.S. at 455-56. As to the first step, the "class of workers is defined by the 'actual work'" that workers typically do on the job, "not what [the employer] does generally." *Id.* Though this sentence from *Saxon*

seemingly makes plain that an industry-based analysis is incorrect, in *Bissonnette*, this Court explicitly reiterated that point and instructed that courts must consider what the relevant class of workers does in isolation to their work, and not in the context of their industry or any other ancillary connection to the direct, actual and physical act of transporting goods interstate. 601 U.S. at 251.

Once a court defines the class of workers based on their actual work, it applies the § 1 exemption only if the workers are "directly involved in transporting goods across state or international borders" such that the work is "as a practical matter, part of the interstate transportation of goods." *Saxon*, 596 U.S. at 457-58. To explain what this means, *Saxon* repeatedly invokes precise and plain language, speaking to a class of worker's "*direct* and *necessary* involvement," and the worker's "*physically* loading and unloading" and "active engagement" in the transportation of goods in interstate commerce – all of which are actions the class of workers performs "frequently." *Id*. at 456-58 (emphasis supplied); *see also Fraga v. Premium Retail Servs. Inc.*, 61 F.4th 228, 237 (1st Cir. 2023) (recognizing the *Saxon* analysis contains a frequency component). Such language – and in particular *Saxon*'s use of the terms "direct" and "physical"[2] to contextualize what "active engagement" means – as a practical matter indicates that the class of workers must themselves carry, convey or otherwise physically move the goods with immediate connection to a border crossing, and not merely have

2. Merriam-Webster defines "physically" to mean "in respect to the body." *See* https://www.merriam-webster.com/dictionary/physically (last visited December 8, 2025). It defines "directly" to mean "in immediate physical contact." *See* https://www.merriam-webster.com/dictionary/directly (last visited December 8, 2025).

some involvement in or impact on the larger process of interstate movement of goods or ancillary connection to the channels of interstate commerce. This is the only proper way to understand *Saxon* and *Bissonnette* within the context of *Circuit City*'s mandate that courts construe and apply the transportation worker exemption narrowly. As Petitioners aptly put it, *Saxon*'s "active engagement" standard "thus requires the worker to actively and personally 'take a part' in the movement of goods across borders." Pet. Br. 17-18.

Read together and properly synthesized, *Circuit City*, *Saxon* and *Bissonette* should make it a straight-forward exercise for lower courts to analyze and determine application of the transportation worker exemption. Yet notwithstanding *Saxon*'s practical and precise language, many lower courts are not applying it correctly. Instead, as Petitioners have observed, in the post-*Saxon* world the transportation worker analysis "has become awash in judge-made factors." Pet. Br. 40. Menzies Aviation agrees with Petitioners that this Court must curtail lower courts' use of such factors to apply the transportation worker exemption to classes of workers whose work is simply not "interstate" in character under a logical and narrow understanding.

At the same time, the notion within the Question Presented of "interacting with vehicles" as entrée to residual clause application would still leave wide open the problem of "judge-made" factors when the question confronting a class of workers is not their geographic movements, but whether they are engaged in "transportation" at all versus having some looser impact on the process of transportation. As examples,

mechanics, car wash and gas station attendants, and toll plaza workers all "interact" with interstate vehicles, yet under any rationale application of *Saxon*, they are not transportation workers. An "interact with vehicles" element as a hook for § 1 application would also leave open the door for inconsistent determinations and analyses as to how to assess what it means to "interact" with a vehicle and what is the requisite level of such "interaction." If the volume of residual clause litigation is to decrease through comprehensively addressing lower courts' deviation from *Saxon* across all aspects of the transportation worker exemption, answering the Question Presented calls for not only resolving the "interstate/intrastate" dichotomy but also addressing the larger "transportation" aspects of the analysis.

II. LOWER COURTS WILL CONTINUE MISAPPLYING *SAXON* AND EXPANDING WHAT IT MEANS TO ENGAGE IN "TRANSPORTATION" IF THIS COURT OPTS TO CONFINE ITS DISCUSSION TO "INTERSTATE"-ONLY CONSIDERATIONS

With respect to the interstate/intrastate dichotomy, Petitioners have noted that this Court "need only observe what is happening in the Circuits that have not enforced § 1's narrow reach." Pet. Br. 43. Many businesses can say the same with respect to the "transportation" aspect of the exemption, and perhaps none more so than the Menzies Aviation enterprise, which has already had four different lower courts apply the § 1 exemption to classes of workers that do not transport anything. Each of these courts have invented analytical tests that depart from *Saxon*'s plain language and give expansive construction

to and application of the transportation worker exemption in violation of *Circuit City*'s mandate. In some examples, the courts have applied the exemption merely because of the nature of operational department the class of workers sits within, and not what their work actually is.

A. In The Wake Of *Saxon*, Courts Are Inventing Amorphous "Bigger Picture" Tests With Expansive Application As To What "Active Engagement" And "Direct And Necessary Involvement" In Transportation Means

The Ninth Circuit has twice applied the exemption beyond *Saxon*'s narrow boundaries. First, in *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152 (9th Cir. 2024), it considered warehouse workers who do not load goods onto vehicles about to cross a border nor unload them from vehicles that have just done so. Rather, the workers merely moved goods from one location within a warehouse to another, covering a distance sometimes measured in mere feet. *Id.* at 1160, 1163. Though such purely within-a-warehouse work is in no way "transportation" of goods in any logical sense of the meaning of "interstate transportation," *Ortiz* applied the exemption to warehouse workers who "fulfilled an admittedly small" role because they "interacted" and "handled" interstate goods as they "were still moving in interstate commerce." *Id.* But *Saxon* never invokes the concepts of "interacting" or "handling" interstate goods – instead, it speaks of "active engagement" that is direct and necessary to their transportation interstate. A good's movement of a few feet exclusively within a warehouse is not a narrow construction of the concept of "interstate"

(and Petitioners are right to criticize *Ortiz* on this basis), and it is certainly not "transportation" of the goods from Point A to Point B in any logical understanding of the word. The district court in *Berdugo v. Lululemon USA Inc. et al.*, No. 5:25-CV-02252-SSS-DTBX, 2025 WL 3312944 (C.D. Cal. Oct. 30, 2025) relied on *Ortiz* to apply the exemption to workers that labeled already-assembled shipping pallets and moved them onto shipping docks exclusively within a warehouse, but neither loaded them onto nor unloaded them from interstate vehicles.

But at least in *Ortiz* and *Berdugo*, even if the class of workers did not transport the goods, they had some physical "interaction" with them. Menzies Aviation experienced a more significant deviation from *Saxon* in *Lopez v. Aircraft Serv. Int'l, Inc.*, which considered a class of workers who fuel aircraft. To state the obvious, the work of such individuals is fueling. They do not "transport" anything. Indeed, the district court explicitly acknowledged that "an employee who adds fuel to cargo planes is not literally moving goods." *Lopez*, 2022 WL 18232726, at *3. Yet the district court applied the exemption to aircraft fuelers because they work closely "both physically and temporally to the actual movement of goods," such that adding fuel to planes is direct involvement "in the transportation [of goods] itself." *Id*. In other words, the district court did not focus on the actual work performed by fuelers and the fact that they do not "transport" anything – instead, it invented a test relying on the fact that fuelers work in the same environment as ramp agents and their work has an impact on the larger process of transportation. *Id*.

On appeal, the Ninth Circuit neither endorsed nor rejected a physical and temporal proximity analysis. Instead, the panel added another analytical invention and applied § 1 because fuelers' work is "a vital component to [a plane's] ability to engage in the interstate and foreign transportation of goods." *Lopez*, 107 F.4th at 1101. One can only wonder how far such a subjective "vital component" analysis might go. Certainly aircraft mechanics' work is "vital" to a plane's ability to fly. So too is the work of a desk-based air traffic controller. An office-based dispatcher performs work that is an important cog in the machinery of interstate trucking. They all can be said, depending on how far one stretches the concepts, to perform "vital" work in "physical and temporal proximity" to workers who perform the physical act of transporting goods across borders. Yet none of these classes of workers have "active engagement" in "interstate transportation" if these concepts have practical meaning within the confines of *Circuit City*. And the concepts of "physical and temporal proximity" and "vital component" have no grounding in *Saxon* – if anything, they more relate to what an employer does generally than what the class of workers does. That is the *Bissonnette* question and this Court's resolution of that question is unambiguous.

Two other district courts in 2025 have, with respect to classes of workers employed by Menzies Aviation, adopted analyses that expand *Saxon*'s limiting and plain language and use industry or impact-on-transportation factors as the basis for § 1 application. On March 24, 2025, the Central District of California in *Amaya v. Menzies Aviation (USA), Inc.* compelled to arbitration the claims of 36 classes of workers, but denied it as to 29 classes on the basis of the transportation worker exemption. Relying on

Lopez, it exempted (i) nearly every class of workers within Menzies Aviation's fueling operation without regard to their duties (including desk-based personnel who perform paperwork and personnel whose duties are limited to operating and maintaining airport fueling systems and infrastructure); and to (ii) employees whose only job was to fuel Menzies Aviation's ground support equipment but not fuel aircraft. 2025 WL 947132, at *4-5. Relying on *Ortiz*, it exempted nearly every class of workers within Menzies' cargo warehouse operations, including office-based positions. *Id*. at *5-6. And it also exempted (i) employees with desk-based dispatcher jobs; (ii) employees whose job is to screen cargo for security purposes; and (iii) supervisory personnel who do not themselves ever interact with passenger baggage or cargo. *Id*. at *4-7. With respect to these positions, the court gave one- to two-sentence explanations, in many cases considering what Menzies Aviation does at an operational level and contextualizing the work of the class to it. *Id*.

On May 19, 2025, in *Joyner v. Frontier Airlines, Inc. et al.*, the District of Colorado applied the exemption to two classes of airport customer service agents whose primary functions were to (i) help passengers with ticketing and check-in functions using self-service machinery and conveyor belt infrastructure, and (ii) board and deplane passengers at terminal gates. 2025 WL 1503141, at *2-4. The classes did not load baggage or cargo onto or off aircraft and, within the airport only, they made use of conveyor belts for baggage's "ultimate transport to the airplane." *Id*. at *2-3. The court looked only to the plaintiffs' testimony to make findings as to the class of workers as a whole, and on that basis concluded that the class of workers "oversee" passengers and "evaluate" them

for compliance with airline baggage rules. *Id.* The district court determined that these "gatekeeping functions" qualified them as exempt transportation workers. *Id.* at *3-4.

Amaya is on cross-appeal to the Ninth Circuit under Case Nos. 25-2041 and 25-2350, and *Joyner* is on appeal to the Tenth Circuit as Case No. 25-1211. Menzies Aviation appreciates that it would be improper to suggest that this Court comment on the propriety of either ruling at this time. Menzies Aviation instead brings them to this Court's attention as illustration of the same concern Petitioners have raised within the "interstate/intrastate" element: lower courts adopting "judge-made" rules that depart from a pure and exclusive focus on what the relevant class of workers does and instead considers (a) what other classes of workers do and (b) the impacts on the "bigger picture" of interstate transportation. For example, as Petitioners have pointed out, the lower courts in their case did not only consider the work Brock performed when making deliveries; instead, they considered how Brock's work fit into a larger "transaction," the work performed by all individuals involved in the overall transportation of the goods at issue, and how Brock's delivery route fit into the big picture (the "journey"). As Petitioners explain, under this approach, "Workers who perform exactly the same work – delivering goods intrastate – may or may not be exempt depending on the transaction prompting the goods' delivery." Pet. Br. 3. This type of "transaction" or "big picture" analysis is effectively the same lens applied in the *Lopez*, *Joyner*, and *Amaya* rulings – but outside an "interstate/intrastate" context. In *Lopez*, the Ninth Circuit applied § 1 to fuelers not because of what they do, but because of their work's "vital" impact on others'

ability to fly planes and transport goods. In *Joyner*, the district court evaluated the plaintiffs' role in "overseeing" passengers and relied upon how they make decisions about what passengers can check and carry onto planes. In *Amaya*, the district court exempted classes because of what department they work in and how their work impacts other workers (for example, supervisors and desk-based dispatchers supporting those actually engaged in the physical transportation work).

Whether looking at "transaction" and "big picture" concepts within an "interstate/intrastate" context or within a context that considers whether a class of workers is "actively engaged" in the frequent act of physically moving goods, *Saxon* and *Bissonnette* seem to instruct courts to look at what the actual work of a class of workers is in isolation and answer whether that work is itself interstate transportation – not whether the work has an important impact on transportation or is an important part of an interstate transaction or journey. If *Saxon* and *Bissonnette* mean something different, it is for this Court to clarify what it meant in its precedents – not for lower courts to decide to look at a class of workers in context rather than in isolation when the *Saxon* test focuses on the class of workers and *Bissonnette* clearly eschews some version of a "big picture" analysis by rejecting employer industry as a relevant factor. For this reason, Menzies Aviation highlights its own experiences litigating transportation worker application to underscore the importance that this Court resolve the Question Presented in a way that fully promotes the FAA's purpose and goal of curtailing litigation and not allowing for decisions that foster litigation.[3]

---

3. Even where lower courts have declined to apply the exemption, the types of classes of workers now claiming under

B. Residual Clause Litigation Will Continue Burdening Lower Courts, And They Will Continue Expanding *Saxon*'s Precise Language, Without Comprehensive Reiteration By This Court Of What It Means To Be A "Transportation Worker"

Petitioners persuasively argue in their Brief how the text and purpose of the FAA § 1 residual clause, as illuminated by *Circuit City*, *Saxon*, and *Bissonnette*, require that the transportation worker exemption's "foreign or interstate commerce" language must mean "interstate" in the truest sense of that word. Classes of workers that do not frequently cross state borders

---

Saxon to be "transportation workers" and the volume of cases they are bringing emphasizes how, absent unambiguous direction, lower courts will continue struggling with and be plagued by § 1 arguments seeking to expand the exemption through "big picture" arguments and pointing to a class of workers' impact on the transportation process. *See, e.g.*, *Saks v. DSV Air & Sea, Inc.*, No. 8:25-CV-01696-FWS-ADS, 2025 WL 2995150, (C.D. Cal. Oct. 10, 2025) (office-based worker that monitors and processes freight movement data not a transportation worker); *Wolford v. United Coal Co., LLC*, 164 F. Supp. 3d 329 (W.D. Va. 2025) (coal mine personnel are not transportation workers); *Jennings v. Ed Napleton Elmhurst Imports, Inc.*, No. 1:23-cv-14099, 2025 WL 461433 (N.D. Ill. Feb. 11, 2025) (car salespeople are not transportation workers); *London v. A-1 Quality Logistical Sols., LLC,* No. 23-CV-107, 2024 WL 4266359 (S.D. Ohio Sept. 23, 2024) (warehouse personnel who assemble customer orders are not transportation workers); *Carr v. Traffic Mgmt., Inc.,* No. 24-CV-01333 HDV JCX, 2024 WL 4329070 (C.D. Cal. Aug. 13, 2024) (air traffic controllers are not transportation workers); *Fraga v. Premium Retail Servs., Inc.*, 704 F. Supp. 3d 289, 296-98 (D. Mass. 2023) ("merchandisers" whose primary function is to promote sales of the employer's product are not transportation workers).

while carrying goods or passengers, classes that do not frequently load goods onto a vehicle that will cross a border as part of its next immediate journey, and classes that do not frequently unload goods from a vehicle that has crossed a border as part of its most recent immediate journey, are only engaged in intrastate (or "exclusively local" as Petitioners put it) activities. Unless *Saxon* and *Bissonnette* mean something different than what their precise language seems to suggest, this Court should reverse the Tenth Circuit and also reject the First Circuit's and the Ninth Circuit's similar decisions in *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020) and *Rittmann*.

In so doing however, this Court should issue an opinion that looks beyond the "interstate/intrastate" implications, and Menzies Aviation is thankful for the opportunity to bring to the Court's attention additional information which may be of considerable help to the Court as it takes up a residual clause case for the third time in six years. That this Court has opted to look again at the § 1 transportation worker exemption itself speaks to the need to reiterate the narrow contours of the exemption in a clear and practical way that district and circuit courts have no trouble applying, and rein in the expansive, inconsistent and amorphous language and "bigger picture" analyses some courts have turned to in the wake of *Saxon*.

What should it mean under *Saxon* to be "actively engaged" and have "direct and necessary involvement" in interstate commerce? Menzies Aviation submits the following statement for the Court's consideration: Transportation workers are only those classes of workers

whose jobs require them to actively and directly move goods or passengers cross-border as measured by: (i) themselves frequently transporting passengers or goods on interstate vehicles across a border; (ii) frequently loading goods onto vehicles that will cross a border as part of the most immediate next part of their journey; and/or (iii) frequently unloading goods from vehicles that have crossed a border as part of the most recent part of their journey. This pragmatic statement of what it means to be a "transportation worker" is an appropriately narrow application of the residual clause as required by *Circuit City*, is directly tied to and consistent with *Saxon*'s language, and faithfully follows *Bissonnette* by removing industry or operational context from consideration. It comprehensively answers the question presented by Petitioners and also resolves what it means to be actively engaged in "transportation" independent of geographic considerations, industry, and impact on the "bigger picture" of the transportation process. If the work performed by the class of workers at issue is anything less direct than what this practical articulation of what it means to be a "transportation worker," § 2 applies.

Limiting the opinion resolving this matter only to how courts should consider the geographic aspects of "interstate commerce" without closing the vagaries of "interacting with vehicles" and without addressing how lower courts are purporting to apply *Saxon*'s language using industry and employer department factors will continue to generate litigation over the meaning of "transportation." More nebulous and amorphous "big picture" concepts like "physical and temporal proximity" and "vital component" that are ripe for

subjective and dissonant application will inevitably add to the jurisprudential vernacular. But uniformity and predictability in FAA enforcement are paramount, and if this Court declines to address how lower courts are using *Saxon*'s plain and precise language to expand the transportation exemption to classes of workers that never transport anything, more FAA litigation over simple motions to compel arbitration will be the result with similar facts resulting in different results depending on jurisdiction. What the Court does in this matter has tremendous implications for industries, businesses and workers with any connection to the modalities of transportation and the channels of interstate commerce – with common carriers and their business partners, warehouse and distribution centers, and interstate vehicle mechanics and maintenance providers to name but a few.

Menzies Aviation thus speaks both for itself and for thousands of other employers and the workers they employ in hoping this Court sees the importance of addressing the full spectrum of the transportation worker exemption and slowing the flow of residual clause litigation now plaguing lower courts. An opinion that that resolves this matter with an explanation of what it means to be a "transportation worker" akin to the statement suggested by Menzies Aviation two paragraphs above will do exactly that in a manner faithful and complementary to *Circuit City*, *Saxon*, and *Bissonnette*.

CONCLUSION

The judgment of the Court of Appeals for the Tenth Circuit should be reversed through an opinion from this

Court that addresses the full scope of § 1's transportation worker exemption, not merely its interstate/intrastate aspects.

Dated this December 11, 2025.

Respectfully submitted,

CHRISTOPHER WARD
Counsel of Record
FOLEY & LARDNER LLP
555 South Flower Street, Suite 3300
Los Angeles, CA 90071
(213) 972-4500
cward@foley.com

JOHN FITZGERALD
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202

Counsel for Amicus Curiae
Menzies Aviation, Inc.