

No. 25-1124

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In the  
**Supreme Court of the United States**

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SCHMIDT BAKING DISTRIBUTION, LLC, ET AL.,

*Petitioners,*

*v.*

NATHANIEL SILVA, ET AL.,

*Respondents.*

—◆—  
**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Second Circuit**

—◆—  
**BRIEF FOR AMERICAN BAKERS ASSOCIATION  
AS AMICUS CURIAE SUPPORTING  
SCHMIDT BAKING DISTRIBUTION, LLC**

—◆—  
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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

The American Bakers Association (ABA) is the largest, most established, and diverse trade association for the commercial baking industry in the United States. ABA's community includes more than 370 member companies representing over 1,200 commercial baking facilities and the extensive industry supply chain. Since 1897, ABA has served as the voice of the baking industry, offering compelling advocacy, insightful thought leadership, and comprehensive research on industry trends.

ABA members sometimes contract with independent wholesale distributors who can purchase the manufacturers' products and sell them to retailers for a profit. The related distributor agreements usually include arbitration provisions to encourage prompt and efficient dispute resolution. Due to the reliance on the independent distributor model by many commercial baking manufacturers, the continual uncertainty in this regulatory space has created challenges for companies and distributors alike, despite the model's long-standing success and mutual benefits.

ABA and its members have a significant interest in the consistent and proper interpretation and implementation of the Federal Arbitration Act (FAA). ABA respectfully submits this brief to offer its perspective,

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<sup>1</sup> In accordance with this Court's Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. Additionally, consistent with Rule 37.2, amicus provided timely notice to counsel for both parties of their intent to file this brief.

based on its knowledge and experience with the actual business operations of bakeries and independent distributors, on the unworkability of the Second Circuit's holding and the dangers it poses to industry.

### **SUMMARY OF ARGUMENT**

The commercial baking industry thrives on diverse distribution models that ensure products reach consumers efficiently. Among these, the independent distributor model stands out as a beacon of entrepreneurship, offering individuals the chance to own and operate their businesses. This model not only fuels economic growth but also empowers small business owners to innovate and excel. By investing in their delivery infrastructure and managing customer relationships, independent distributors create a dynamic marketplace that benefits both regional and national brands. The rise of this model since the late 1990s underscores its effectiveness and the opportunities it provides for those seeking control over their financial futures.

However, the Second Circuit's recent decision threatens to destabilize this model by introducing an arbitrary distinction between smaller and larger business entities under Section 1 of the FAA. This ruling sows confusion and inconsistency, forcing businesses, small and large alike, to navigate a murky legal landscape. The decision disrupts the industry by failing to recognize the strategic choices and entrepreneurial spirit that drive these businesses.

The implications of the Second Circuit's ruling extend beyond legal confusion; they undermine the very

principles of the FAA, which aims to promote arbitration and reduce litigation costs. This decision disproportionately burdens small businesses, which may struggle to absorb unnecessary legal expenses. In contrast, other circuits have rightly acknowledged that distributor agreements differ fundamentally from traditional employment contracts. To protect the vitality of the baking industry and support small business owners, it is crucial to establish clear and consistent legal standards that honor the entrepreneurial spirit and economic contributions of independent distributors. On these bases, the ABA respectfully submits this brief in support of petitioner and ask that this Court grant certiorari.

## ARGUMENT

### **I. Independent Distributors Represent an Important Component of Supply Chain for Commercial Baking Companies.**

It is important for commercial baking companies to ensure that their products are distributed to retail outlets in a safe, timely and efficient manner. Throughout the industry's history, many companies have utilized various business models to accomplish this function. These models vary based on company size, market structure, and geography. Some bakeries maintain fully integrated distribution systems with employee drivers who deliver, merchandise, and manage retail relationships directly.

At the same time, for over seven decades, many bakeries, particularly regional and national brands, have outsourced their distribution to third-party independent contractors—in whole or in combination with

employee drivers (*e.g.*, in different regions of their operations)—to sell, distribute, and merchandise the products of baking manufacturers, although notably, the use of such arrangements has been on the rise since the late 1990s and early 2000s. Still others operate hybrid systems, using both employees and third-party distributors in different markets, to balance efficiency, flexibility, and cost.

In distribution agreements, a baking company will typically grant or sell to an independent distributor the right to distribute products within a sales area or territory and to market and sell those products to retailers and other accounts within that area. These independent distributors operate their own businesses, purchasing products from a bakery for resale in the independent distributor’s territory. Independent distributors invest in their own delivery vehicles, delivery routes, and hired personnel to create an alternative distribution method for wholesale bakeries. These independent distributors create jobs and allow individuals the opportunity to become small business owners who have the opportunity to sell and distribute nationally and regionally known baked goods.

## **II. The Second Circuit’s Holding Would Disrupt a Major Distribution Model for Wholesale Baking Companies.**

In this case, the Second Circuit’s holding that Section 1 of the FAA applies to smaller corporate entities but not “sizeable business entities” provides an unworkable standard for industry.<sup>2</sup> The Second Circuit’s

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<sup>2</sup> *Silva v. Schmidt Baking Distrib., LLC*, 162 F.4th 354, 363 (2d Cir. 2025).

distinction not only draws an undefined and arbitrary line in the sand, but it also forces both bakeries and independent distributors alike to speculate as to whether the FAA applies to their negotiated agreements.

This Court should grant certiorari and review the Second Circuit's holding for two reasons. First, such uncertainty is incredibly disruptive to the baking industry and independent distributors who rely on distributor agreements. The Second Circuit fails to articulate any kind of usable guideline for when business entities are contained within the scope of contracts for employment under Section 1 of the FAA. Second, the holding creates inconsistent law across the different circuits. Such a circuit split is especially damaging in a business that frequently involves significant interstate commerce.

The Second Circuit's decision is particularly dangerous because it is based on a false premise. The Second Circuit framed this case around, and based their holding on, the notion that industry coerced workers into using the independent distributor model.<sup>3</sup> Nothing could be further from the truth. Although there are several models for product distribution, independent distribution has been a successful model for decades for bakeries, workers, and small business owners. Independent distribution is an ideal model for individuals seeking greater control and ownership of the fruits of their labor.

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<sup>3</sup> See *id.* at 357.

Independent distributors can generate profits (or conversely, suffer losses) from their sales and distribution activities. An independent distributor's profits depend upon an independent distributor's sales strategy, initiative, business plan, and management of its employees and vehicles, among other factors. An independent distributor's customer relationships, business development efforts, success in negotiating additional space and displays in its customers' stores, strategic use of employees, agents, and equipment, and good customer service—all factors within the independent distributor's control and dependent upon their business acumen—dictate the ultimate success of his or her business. And these businesses, large or small, can be very successful: the value of distribution rights has led to the development of a robust marketplace wherein independent distributors can manage a successful business by buying, selling, and trading distribution rights.

For these reasons, distribution agreements with independent distributors are freely negotiated and can vary widely in the industry. For example, some agreements may require distributors to provide their own warehouses while others do not. Still, some agreements can be negotiated to include exclusive distribution while others do not include such prohibitions. Similarly, sometimes manufacturers may finance wholesale distributors' purchase of distribution areas. Further, the mechanics of delivery could

change not only on a distributor-by-distributor basis, but even delivery-by-delivery.<sup>4</sup>

The Second Circuit’s decision fails to understand or incorporate that reality. Proprietors of independent distributors intentionally take upon themselves the risks, responsibilities, and advantages of the corporate forms regardless of size. As both the Ninth and Fourth Circuits have held in *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, and *Amos v. Amazon Logistics, Inc.*, respectively, such risks, responsibilities, and advantages include the enforcement of arbitration provisions subject to the FAA.<sup>5</sup> The mere fact that a corporation is small in size does not ordinarily impact that corporation’s rights or responsibilities, especially without an explicit statutory exception.

The Second Circuit based its holding largely on this Court’s holding in *New Prime Inc. v. Oliveira*.<sup>6</sup> In *New Prime*, this Court held that contracts with independent contractors were considered contracts of employment under Section 1 of the FAA.<sup>7</sup> Unlike the circumstances in *New Prime*, which ultimately involved

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<sup>4</sup> See Brief for Independent Bakers Association and American Bakers Association as Amici Curiae Supporting Petitioners, *Flower Foods, Inc. v. Brock*, 146 S. Ct. 327 (2025) (No. 24-935).

<sup>5</sup> 97 F.4th 1190, 1194-1198 (9th Cir. 2024); 74 F.4th 591, 596 (4th Cir. 2023) (“First and foremost, the Agreement at hand simply is not a ‘contract of employment’—it does not promise work and compensation to an individual employee, and it contains none of the hallmarks of a traditional employment contract, such as provisions regarding salary, benefits, and leave time.”).

<sup>6</sup> 586 U.S. 105, 121 (2019).

<sup>7</sup> *Ibid.*

contracts between companies and individual independent contractors who perform discrete and specific tasks for their employers, the case here is purely between two businesses that enjoy all of the risks, benefits, advantages, and legal protections of the corporate form. Both the plain language of the statute, which refers to “contracts of employment \* \* \* of workers engaged in foreign or interstate commerce,” as well as the actual mechanics of distribution agreements support the conclusion that distributor agreements are not “contracts of employment” as contemplated by the FAA.<sup>8</sup>

Because of the Second Circuit’s erroneous decision, the current landscape for bakeries and their independent distributors is extraordinarily confusing. In addition to “unnecessarily complicating the law,” the decision undermines the FAA’s explicitly stated pro-arbitration purpose by imposing on both parties to a dispute unnecessary litigation costs associated with traditional litigation.<sup>9</sup> Although larger companies may be able to bear these expenses, small businesses, including sole-proprietor independent distributors and small bakeries, will suffer disproportionately.

## CONCLUSION

For these reasons, the American Bakers Association respectfully requests that this Court grant a writ of certiorari in this case and overturn the Second Circuit’s decision.

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<sup>8</sup> 9 U.S.C. 1.

<sup>9</sup> *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 275 (1995); see also *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001).

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