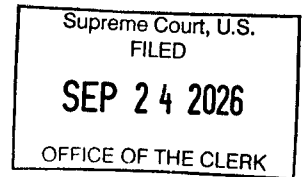


26-5795
No. 26

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Carol Ann McBratnie, *pro se*

— PETITIONER

v

Amazon.com, Inc

— RESPONDENT

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Carol Ann McBratnie, *pro se*
1130 Larkmoor Blvd
Berkley, MI 48072
248-546-5945
cammsnp@gmail.com
September 23, 2026

QUESTIONS PRESENTED

1. Did the US District Court lack jurisdiction to compel arbitration under both the FAA and the Delaware Uniform Arbitration Act (exclusive jurisdiction)?
This involves an intra- and inter-Circuit Court split regarding the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) FAA section 1 exemption decision. Two US District Courts deemed *Rittmann v. Amazon.com, Inc.* was no longer a valid precedent post *Southwest Airlines Co. v. Saxon*, 596 U. S. 450 (2022). *Rittmann v. Amazon.com, Inc.* now requires reaffirmation as valid precedent by *Flowers Foods, Inc. v. Brock*, 608 U.S. _____ (5-28-2026), the Supreme Court decision that occurred after this case was decided in the Sixth Circuit.
2. Where, when and by whom should challenges to the legality of a contract be addressed, when arbitration is involved, where ‘gateway’ decisions are assigned to the Court, where severing of illegal clauses is contractually anticipated? The sub-question is ‘*If misclassifying workers to thwart the FLSA, would be an illegal unenforceable contract*’.

PARTIES TO THE PROCEEDING

Petitioner Carol Ann McBratnie, was Plaintiff-Appellant in the Sixth Circuit Court of Appeals.

Respondent AMAZON.COM, INC., was Defendant-Appellee in the Sixth Circuit Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required because McBratnie is not a corporation. See Sup. Ct. R.29.6.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *McBratnie v Amazon.com Inc.*, Case 2:24-cv-12914-MFL-DRG (E. D. Mich.) motion to compel arbitration granted July 22, 2025. Reconsideration denied on August 11, 2025.
- *McBratnie v Amazon.com Inc.*, No. 0:25-cv-01744 (6th Cir.) US District granting of motion to compel arbitration affirmed, March 6, 2026; petition for rehearing and rehearing en banc denied April 29, 2026.

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243 (1929) 28,29

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9 U.S.C. § 1 FAA “Exemption” 2,4,6-9,15-17,19,20,23-26,28,30,33,34,39

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9 U.S.C. § 3 “Agreement to Arbitrate an Issue” 2,17,19,22,30,31,34,35

9 U.S.C. § 4 “Compelling Arbitration” 2,19,30,34,35

28 U.S.C. § 1254(1) Supreme Court Jurisdiction 1

28 U.S.C. § 1332(a)(1) and (c)(1) Diversity Jurisdiction 1

29 U.S.C. § 218c Fair Labor Standards Act (FLSA)

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Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq.

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OPINIONS BELOW

The District Court's order granting Respondents' motion to compel arbitration is reproduced at Pet.App.7a-27a. The Sixth Circuit's opinion affirming the District Court's order granting Respondents' motion to compel arbitration is reproduced at Pet.App.1a-4a.

JURISDICTION

The Sixth Circuit issued its decision in this case on March 6, 2026. It denied Petitioners' timely petition for rehearing *en banc* on April 29, 2026. This petition received an extension of time for filing the *writ of Certiorari* on June 22, 2026, and the *writ* was due by September 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Jurisdiction of the US District Court is founded in Article III, Section 2, Clause 1, subpart 16 Diversity Jurisdiction, of a Contract for services between Amazon.com of Washington State, and Plaintiff a resident of Michigan (28 U.S.C. § 1332 (a)(1) and (c)(1)). In order for the FLSA and Whistleblower Retaliation protections to apply to Petitioner, Petitioner's true worker classification needs to be determined first.

STATUTES

Federal Arbitration Act sections, 1-4 reproduced at Pet.App. 51a-54a

Fair Labor Standards Act (FLSA) section 29 U.S.C. § 218c reproduced at Pet.App.

60a-62a

Whistleblower Retaliation section 15 U.S. Code § 2087 reproduced at Pet.App.

63a-69a

STATE LAWS

Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. reproduced at

Pet.App. 55a-59a

INTRODUCTION

The Amazon Flex Delivery Driver contract in the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) decision, had choice of law and gateway decision delegation choices different from the contract today. The historical wording was simpler:

11 j) The parties agree that the Federal Arbitration Act and applicable federal law will govern any dispute that may arise between the parties. The parties further agree that, notwithstanding any provision in the AAA rules, any disputes regarding the arbitrability of a claim or the validity, interpretation, or enforcement of any provision (including a waiver) relating to class, collective or representative claims shall be decided by a court of competent jurisdiction, and not by an arbitrator.

12. Governing Law.

The interpretation of this Agreement is governed by the law of the state of Washington without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law.

Concurrent State jurisdiction was rejected in *Rittmann v. Amazon.com*, premised on non-selection of a fallback State. Amazon added Delaware as a choice of law fallback State for contract interpretation and arbitration. Amazon did not check the actual language of the Delaware Uniform Arbitration Act that retains exclusive jurisdiction of the Delaware Uniform Arbitration Act under the domain of the Delaware Court of Chancery, directing everything else back to the FAA.

The newer contractual wording in this instant case's contract is: ,

j) Notwithstanding any provision in the AAA rules, the parties agree that a court of law must resolve any dispute concerning the validity and enforceability of the Agreement as a whole, the applicability of any exemption to the Federal Arbitration Act, and the validity, enforceability or interpretation of the provisions in subsections b) through i) of this Section 11.

The arbitrator must resolve all other disputes, including all other disputes about the arbitrability of claims pursuant to such other provisions. If any portion of the class, collective or representative action waiver is found to be void or unenforceable, then the portion of the waiver found void or unenforceable shall be severed from this Agreement, and all other parts and provisions shall remain in full force and effect. In such a case, the claim or claims (or portion of claims) found to be able to proceed on a class, collective or representative action basis shall proceed in a court of competent jurisdiction and not in arbitration. In no event shall a court or arbitrator order arbitration on a class, collective or representative basis. Any claims or claim in court shall be stayed until the arbitration is concluded, unless such stay is contrary to applicable law.

12. Governing Law.

The interpretation and enforcement of this Agreement is governed by the law of the state of Delaware without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law.

If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this Agreement, the law of the state of Delaware and the Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. will govern Section 11 of this Agreement, including without limitation the common law of contracts of such state in the event that any statute could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement.

Nothing in this choice of law provision shall preclude the application of Delaware law to compel arbitration if a court of competent jurisdiction is unable to determine the application of the Federal Arbitration Act without discovery.

The pertinent part of the Delaware Uniform Arbitration Act states:

§ 5701. Effect of arbitration agreement.

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciability character of the controversy, **and confers jurisdiction on the Chancery Court of the State to enforce it** and to enter judgment on an award. In determining any matter arising under this chapter, the Court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, except as otherwise provided in § 5725 of this title. (10 Del. C. 1953, § 5701; 58 Del. Laws, c. 382, § 2.)

§ 5702. Jurisdiction; applications; venue; statutes of limitations.

(a) Jurisdiction of the Court; applications to the Court.

— **The term “Court” means the Court of Chancery of this State, except where otherwise specifically provided.**

The making of an agreement described in § 5701 of this title specifically referencing the Delaware Uniform Arbitration Act [§ 5701 et seq. of this title] and the parties’ desire to have it apply to their agreement **confers jurisdiction on the Court to enforce the agreement under this chapter** and to enter judgment on an award thereunder, except as provided in § 5718 of this title. Action shall be commenced by an initial complaint and shall be heard in the manner and upon the notice provided by law or rule of court on any civil action. Notice of an initial complaint shall be served in the manner provided by law for the service of summons in an action.

(b) Venue.

— An initial complaint shall be made to the Court with the Register in Chancery in and for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the complaint shall be filed with the Register in Chancery in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of

business in this State, to the Register in and for any county. All subsequent pleadings or applications for an order made under this chapter shall be filed in the Court hearing the initial complaint unless the Court otherwise directs.

(c) Court of Chancery jurisdiction over arbitration-related disputes in cases not governed by the Delaware Uniform Arbitration Act.

— **Unless an arbitration agreement complies with the standard set forth in subsection (a) of this section for the applicability of the Delaware Uniform Arbitration Act,**

any application to the Court of Chancery to enjoin or stay an arbitration, obtain an order requiring arbitration, or to vacate or enforce an arbitrator's award

shall be decided by the Court of Chancery in conformity with the Federal Arbitration Act [9 U.S.C. § 1 *et seq.*], and such general principles of law and equity as are not inconsistent with that Act.

In such cases, the other provisions of this Delaware Uniform Arbitration Act are without standing and cases shall be adjudicated in accordance with the Court of Chancery's Rules of Procedure.

(d) Jurisdiction of the Court of Common Pleas. [Not applicable]

— [this section relates to a contract to provide consumer credit.]

(10 Del. C. 1953, § 5702; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 34, § 1; 77 Del. Laws, c. 8, §§ 2, 3.)

The Court in this instant case bypassed the FAA, ordering arbitration purportedly under Delaware Uniform Arbitration Act, where jurisdiction is reserved exclusively to the Delaware Court of Chancery, and all others are referred back to the FAA. The US District Court Order lacked jurisdiction and was void. The 'pure textualist' semantics of the contract never successfully selected Delaware Uniform Arbitration Act to govern arbitration (see Semantics of Section 12, Second Clause).

STATEMENT

STATUTORY BACKGROUND

The Supreme Court has addressed the Federal Arbitration Act across many cases trying to define which workers are exempt from arbitration under the FAA Section 1 exemption (9 U.S.C. § 1).

The Court's first encounter with the worker exemption was twenty-five years ago in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001). There, the Court held that the exemption does not apply to all workers; it applies only to the "contracts of employment of transportation workers." *Id.* at 119.

Next, in *New Prime, Inc. v. Oliveira*, 586 U.S. 105, 121 (2019), the Court held that the exemption applies to any form of worker, both employees and independent contractors.

The Court decided in *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 253-256 (2024) that "(a) transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by §1 of the Act".

In *Southwest Airlines Co. v. Saxon*, 596 U. S. 450 (2022), the Supreme Court found it equally plain that airline employees who physically load and unload cargo, on and off planes traveling in interstate commerce, form "a class of workers engaged in foreign or interstate commerce".

Southwest Airlines Co. v. Saxon, was misinterpreted in two US District Court cases (this instant case and *Walker v. Amazon Logistics, Inc.*, No. 25-cv-1840, 2025 WL 2933896 (N.D. Ohio Oct. 15, 2025)), that asserted the exemption should be limited to workers who personally cross borders, now rendered an incorrect interpretation by the decision in *Flowers Foods, Inc. v. Brock*. Both this instant case and *Walker v. Amazon Logistics, Inc.* were incorrectly decided.

Flowers Foods, Inc. v. Brock, 608 U.S. _____ (5-28-2026) clarified the vagueness of *Southwest Airlines Co. v. Saxon* regarding the assertion that a transportation worker must cross State borders themselves. The Supreme Court clarified that the FAA section 1 exemption applies to a class of workers that are part of an unbroken chain of interstate commerce (single transaction), that includes delivery drivers that only complete an “intrastate leg of an interstate journey”. Although *Southwest Airlines Co. v. Saxon* and *Flowers Foods, Inc. v. Brock* mentioned the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) decision, and *Flowers Foods, Inc. v. Brock* in the 10th Circuit was premised on the *Rittmann v. Amazon.com, Inc.* decision, the Supreme Court has not definitively addressed *Rittmann v. Amazon.com, Inc.*.

Within the Sixth Circuit, an intra-circuit split has occurred. This intra-circuit split engenders an inter-circuit split of the *Rittmann v. Amazon.com, Inc.* decision with eight circuits and D.D.C accepting *Rittmann v. Amazon.com, Inc.* as valid

precedent, with the remaining three Circuits silent. The US District Court for the Eastern District of Michigan, under one Court, determined that the *Rittmann v. Amazon.com* was valid precedent. The Court in this instant case, from the same district, chose to avoid acknowledgement of the precedent, which denied it as a precedent. A third Court from another district within the Sixth Circuit outright denied *Rittmann v. Amazon.com* as precedent, asserting that *Rittmann v. Amazon.com* predated *Southwest Airlines Co. v. Saxon* and *Bissonnette v. LePage Bakeries Park St., LLC*, which nullified *Rittmann v. Amazon.com*. That Court then made their own decision.

An intra-circuit and inter-circuit split exists regarding the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) precedent. Since all Amazon Flex Delivery Drivers operate under the same contract across the United States (sans California), and complete only “intrastate legs of interstate journeys”, the intra- and inter-circuit split requires resolution, compatible with the Supreme Court precedent in *Flowers Foods, Inc. v. Brock*.

FACTUAL BACKGROUND

1. Amazon provides an online shopping experience for their customers, that provides for delivery services of purchased items to the customers address. An Amazon customer order transaction is initiated on the Amazon website, and then the product starts its shipment process, passing through many channels to ultimately get to the customers door, where the transaction is completed.
2. The Amazon Flex App allows individuals to sign up to provide the 'last-leg' of such deliveries using the smartphone mobile application called Amazon Flex, and using their personal vehicle for delivery. Individual delivery drivers can self-schedule available delivery blocks, to fulfill the final journey of Amazon's end-to-end merchandise ordering and delivery system transactions.
3. To sign up with Amazon Flex, individuals must download the Amazon Flex app on their smartphone, create an account, select a regional area in which they wish to make deliveries, and accept the Amazon Flex Independent Contractor Terms of Service.
4. Delivery Drivers are initially and continuously background checked (Pet.App. 41a section II (A)(1) and Pet.App.45a "Privacy" subsection B "...from time to time").

5. Amazon Flex Delivery Drivers are part of the ‘last-mile drivers’ that perform a totally intrastate portion of an interstate delivery process.
6. Other ‘last mile’ delivery service providers include: United Parcel Service, the United States Postal Service, FedEx, and Amazon’s Delivery Service Partners (DSP) “blue panel van” delivery drivers.
7. Amazon DSP Delivery Service Partners business entities, receive all their income from Amazon, and coordinate services exclusively for Amazon.
8. Both Amazon Flex Delivery Drivers and Amazon DSP Delivery Drivers operate out of Amazon owned, operated and staffed warehouses.
9. Amazon is the joint employer of Amazon Flex Delivery Drivers and Amazon DSP delivery drivers (US District Court document ECF 48-1 Amazon recruits and ECF 48-2 Amazon controls compensation).
10. Amazon maintains and provides the contracts that both Amazon DSP Delivery Drivers sign, and Amazon Flex Delivery Drivers sign.
11. Amazon performs background checking to determine who is hireable, and continuous checking of all drivers to determine who is no longer eligible.
12. Amazon Flex Delivery Drivers are paid the same or similar hourly compensation as DSP delivery drivers.
13. Amazon DSP Delivery Drivers and Amazon Flex Delivery Drivers pick up packages from the same warehouse, load their own vehicle, use the App to

manage and track deliveries, and return packages to the warehouse as necessary.

14. Amazon DSP Delivery Drivers and Amazon Flex Delivery Drivers work side-by-side performing the same job.

15. Amazon classifies DSP delivery drivers as employees, and Amazon Flex Delivery Drivers as Independent Contractors.

16. Amazon Flex Delivery Drivers use personal vehicles to make deliveries of packages to customers. Amazon DSP Delivery Drivers are provided a vehicle ("blue panel van") to make deliveries of packages to customers.

17. Amazon Flex Delivery Drivers are not reimbursed Amazon's mileage expense for the last-leg of delivery. Amazon DSP Delivery Drivers incur no mileage expense. Amazon compensates the DSP business entity mileage.

18. Petitioner's mileage expense was 55% of the hourly pay provided, averaged over six-years.

19. Many Amazon Flex routes produced negative income, as the compensation paid does not exceed the mileage expense incurred (US District Court document ECF 9-5).

20. Refusal of such routes results in termination from the 'Amazon Flex Program' under the policy of 'late forfeit' of a route (Pet.App. 42a: "Reliability").

21. Amazon does not pay overtime to Amazon Flex Delivery Drivers.
22. If a route has more assigned packages than can be completed in the agreed upon route block timeframe, the Amazon Flex Delivery Driver is expected to provide more time uncompensated to make all the deliveries (Pet.App. 43a-44a: subsection 3) "Delivery Quality" iii)).
23. Termination occurs for failing to attempt to deliver all assigned packages (US District Court document ECF 9-2) the trigger of this Complaint.

Parties Positions:

24. Petitioner asserts she was a misclassified employee, and the route that caused termination was due to Petitioner refusing to work past the agreed upon compensated amount of time of the delivery block and work for free, thus violating minimum wage and the FLSA. Petitioner asserts that her termination was 'Whistleblower Retaliation'.
25. Amazon asserts they had the right to terminate Petitioner per the contract terms because Petitioner did not attempt to deliver all assigned packages (US District Court document ECF 9-2).
26. Petitioner asserts that Amazon misclassified Amazon Flex Delivery Drivers to shift Amazon's mileage expense to the driver for financial advantage over their competitors, and that misclassification of Amazon Flex Delivery Drivers has unjustly enriched Amazon.

27. Petitioner asserts that the Contract the US District Court is enforcing was one for the illegal purpose of misclassifying workers, and that upon review of the written contract, that no valid agreement to arbitrate existed, and that nothing remains of the contract to enforce after removing all the illegal clauses associated with worker misclassification. All that is left of the written contract is an employee handbook of how Amazon seeks to micromanage the Amazon Flex Delivery Driver's employment (Pet.App. 41a "Program Policies").

28. The 13th Amendment that abolished slavery, has been codified into the statutes of the FLSA and State laws to identify when workers are being treated unfairly. A contract that violates the FLSA is modern day slavery, implemented behind a contract. In many cases, this 'slavery' remains further hidden behind an arbitration agreement whose decisions are not publicly viewable or carefully memorialized.

29. Petitioner asserts she was a whistleblower who refused to work for free which resulted in termination.

PROCEDURAL BACKGROUND

Petitioner filed a complaint against Amazon.com Inc. alleging worker misclassification and whistle-blower retaliation for her refusal to work for free, under the Fair Labor Standards Act, Michigan labor laws and more. Petitioner alleged no viable contract exists. Petitioner resides in Michigan. Amazon is corporately organized in Delaware and Headquartered in Washington (Diversity Jurisdiction).

Amazon moved to compel arbitration under the Delaware Uniform Arbitration Act arguing that *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022) established precedent that Amazon last-leg delivery drivers, are not FAA section 1 exempt premised on a similarly styled ‘bookend’ oral argument as addressed by *Flowers Foods, Inc. v. Brock*, 608 U.S. _____ (5-28-2026). Pet.App. 70a-71a.

The District Court granted Amazon.com Inc.’s motion, bypassing addressing the FAA, and applying Delaware Uniform Arbitration Act in isolation. Pet.App. 21a-22a. The District Court justified not addressing the FAA, because determining the “Section One Exemption ... may be a difficult one”.

Petitioner appealed this order as a jurisdictionally void order. The Sixth Circuit affirmed the US District Court’s granting of Arbitration. Pet.App. 1a-4a.

Flowers Foods, Inc. v. Brock, 608 U.S. _____ (5-28-2026) was decided after *en banc* rehearing was denied on April 29, 2026.

REASONS FOR GRANTING THE PETITION

Two questions are presented.

I. FIRST QUESTION: JURISDICTION

Summary

Did the US District Court lack jurisdiction to compel arbitration under both the FAA and the Delaware Uniform Arbitration Act (exclusive jurisdiction)? The Delaware Uniform Arbitration Act (§ 5702 (a-c)) is circular in its articulations (exclusive jurisdiction), identifying the FAA will govern all cases not originating in the Delaware Court of Chancery. The US District Court in this instant case, rewrote the contract to not address the FAA at all, and issued an order to compel arbitration purportedly under Delaware Uniform Arbitration Act. This requires decision on an intra- and inter-Circuit Court split regarding the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) decision on the FAA section 1 exemption, that identified that Amazon Flex Delivery Drivers were FAA section 1 exempt, which would identify that the order compelling arbitration was void under both the FAA and Delaware Uniform Arbitration Act.

A. US DISTRICT COURT LACKED JURISDICTION

The combined decisions of the Supreme Court in *Southwest Airlines Co. v. Saxon*, 596 U. S. 450 (2022), and *Flowers Foods, Inc. v. Brock*, 608 U.S. _____ (5-28-2026) as applied to *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th

Cir. 2020) defined that the FAA section 1 exemption applies to a class of workers that are part of an unbroken chain of interstate commerce (single transaction), that includes delivery drivers that only complete an “intrastate leg of an interstate journey”. *Flowers Foods, Inc. v. Brock* was decided after the Sixth Circuit Court of Appeals decision in this instant case. **An intra- and inter-Circuit Court split on the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020) precedent is present.**

The First Question focuses on the interrelationship between Federal and State Arbitration Laws, and in this case requires contractual interpretation of what the word “apply” meant as used in the Amazon Flex Delivery Driver Contract.

The US District Court in this instant case modified the parties' written contract and did not first apply the FAA to the factors of this case. The contractual wording granted ‘gateway’ issues to the court (excerpt from Pet.App. 37a-38a):

11 j) Notwithstanding any provision in the AAA rules, the parties agree that a **court of law must resolve**

any dispute concerning the validity and enforceability of the Agreement as a whole, [FAA section 2; Del. C. § 5701]

the applicability of any exemption to the Federal Arbitration Act, [FAA section 1]

And the validity, enforceability or interpretation of the provisions in subsections b) through i) of this Section 11 [FAA section 3].

...

12) Governing Law

The interpretation and enforcement of this Agreement is governed by the law of the state of Delaware without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law.

If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this Agreement,

the law of the state of Delaware and the Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. will govern Section 11 of this Agreement, including without limitation the common law of contracts of such state in the event that **any statute** could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement.

Nothing in this choice of law provision shall preclude the application of Delaware law to compel arbitration if a court of competent jurisdiction is unable to determine the application of the Federal Arbitration Act **without discovery**.

[Formatting by Petitioner]

Under 12 Governing Law: Discovery was not needed nullifying the third clause of section 12. The first clause of section 12 is self-explanatory.

Semantics of Section 12, Second Clause

Amazon's poor contractual wording using the term "apply", put a 'pure textualist' twist on contractual interpretation. This raises the issue as to which object: the contract in total, a section of the contract, the business or the worker, the FAA was '*not to apply*' to. The conditional clause translated: "*If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this Agreement, (the arbitration part of the contract)*".

The FAA under all circumstances applies to the arbitration portion of the contract. In applying to the "Agreement", the FAA rendered Amazon Flex Delivery Drivers exempt from arbitration.

The contract in *Southwest Airlines Co. v. Saxon* was more carefully worded:

To the extent the FAA is deemed **not to apply** (e.g., you are found to be exempt from the FAA), **this Agreement** shall be enforceable under the law of the State of your primary work location.

Southwest Airlines Co. v. Saxon applied the outcome of the FAA to the Agreement, selecting to exercise concurrent State jurisdiction in arbitration. Amazon applied the FAA to a subsection of the contract wording itself. Amazon wrote this contract, and Courts should not add to it or take away from what was written. Petitioner addressed this in the answer to the Motion to Compel Arbitration at Case 2:24-cv-12914-MFL-DRG ECF No. 26, PageID.755 Filed 02/17/25 Page 9 of 31 #4):

4. From the 3rd circuit in *Boase v. Lee Rubber & Tire Corp.*, 437 F.2d 527 (3rd Cir. 1970), affirming from the Supreme Court of Delaware *Conner v. Phoenix Steel Corp.*, infra:

We may not rewrite the contract. As the court noted in *Conner v. Phoenix Steel Corp.*, 249 A.2d 866, 868 (Del.1969):

It is, of course, axiomatic that a court may not, in the guise of construing a contract, in effect rewrite it to supply [PLF asserts 'or correct'] an omission in its provisions. ... It is only when there is an ambiguity in the plan, itself, that a court may construe it to determine the true meaning.

Delaware Uniform Arbitration Act Redirects back to the FAA

The Delaware Uniform Arbitration Act, 10 Del. C. § 5702 (a - c) Pet.App. 55a, redirects parties invoking the Delaware Uniform Arbitration Act, but not through the Delaware Court of Chancery § 5702 (a), back to the FAA for interpretation § 5702 (c). The General Assembly of Delaware anticipated restricting Delaware Uniform Arbitration Act Laws to the jurisdiction of the Delaware Court of Chancery alone. All outside forums are redirected back to the FAA. Any ordering of arbitration under this contract and under the Delaware Uniform Arbitration Act would of necessity redirect to using FAA statutes, which the US District Court refused to address in this instant case (Pet.App. 21a) stating:

Moreover, other courts have held that where, as here, (1) the question of whether the Section One Exemption applies may be a difficult one, (2) state law provides an alternative basis for compelling arbitration, and (3) it is clear that arbitration should be compelled under state law, a court may compel arbitration under state law without resolving the difficult question of whether the Section One Exemption applies.

The US District Court rewrote the parties contract to exclude assessment under the FAA that was mandatory ("must resolve"). The US District Court lacked jurisdiction to order arbitration under the Delaware Uniform Arbitration Act due to exclusive jurisdiction, and its redirecting all others back to the FAA. **The US District Court order Compelling Arbitration was without jurisdiction and was void.**

Semantics of Section 12 Second Clause Continued

The other section 12, second clause: post-conditional clause:

in the event that any statute

[not just the FAA but every statute]

could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement

[then Delaware Uniform Arbitration Act was to apply]

would only be active if the first conditional clause were active. The FAA section 2 ‘savings clause’ is question 2 of this *writ*, as to what to do with an illegal contract. It appears Amazon desired to avoid challenges of an illegal contract to be addressed by the court, and sought to force arbitration to be ordered, to enforce an illegal contract under the Delaware Uniform Arbitration Act. For an illegal contract this second conditional clause translates thus:

in the event that any statute

[ie. FAA section 2 “savings clause” intercepting illegal contracts from enforcement or the FLSA statutes]

could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement

[then Delaware Uniform Arbitration Act was to apply]

Amazon’s contractual wording just elevated Amazon free to rewrite statutes they disagree with. Amazon just contractually forced an illegal contract for worker

misclassification to be arbitrated under Delaware Uniform Arbitration Act. The Delaware Uniform Arbitration Act has a 'savings clause' that the Court bypassed in refusing to address whether the contract was for an illegal purpose, a gateway issue delegated to the Court under section 11 j) of the contract: "*any dispute concerning the validity and enforceability of the Agreement as a whole*".

The wording of the second clause of section 12 requires severing. Amazon was insisting 'everything will be arbitrated' irregardless of statutes. The Delaware Uniform Arbitration Act (§ 5701) has a 'savings clause' precluding the enforcement of illegal contracts by arbitration. This should highlight the reason the second question in this *writ* requires addressing as to where and when to address an illegal contract. The illegal clauses of a severable contract require severing before discerning whether the parties agreed to arbitrate a specific issue per FAA section 3. In this instant case, Petitioner asserts there is nothing residual in the contract to enforce. The sub-question behind the question of when and where illegal contracts should be addressed per the second question of this *writ*, is '*if misclassifying workers to thwart the FLSA, would be an illegal unenforceable contract*', that "savings clause" language applies to.

Applied Arbitration Laws: FAA and Delaware Uniform Arbitration Act

Petitioner holds that no valid or enforceable arbitration agreement existed within the contract, premised on *Rittmann v. Amazon.com, Inc.*, the circular nature and exclusive jurisdictional forum of the Delaware Uniform Arbitration Act (10 Del. C. § 5702 (a - c)), and the ‘*pure textualist semantics*’ of contract wording. The District Court acknowledged this argument:

McBratnie opposed Amazon’s motion. In her response, she argued that she could not be compelled to arbitrate because (1) her claims were covered by the Section One Exemption and (2) Delaware arbitration law did not apply. (Pet.App. 12a)

B. CIRCUIT SPLIT

Rittmann v. Amazon.com, Inc., 971 F.3d 904, 916-19 (9th Cir. 2020) has been acknowledged as valid precedent in all but the 4th, 6th, and 8th Circuit Courts. Circuit adoptions of *Rittmann v. Amazon.com, Inc.* are on pages 13-14 of Document 19 in the 6th Circuit Court of Appeals case. To obtain consistency for all Amazon Flex Delivery Drivers across this country, this first question requires resolution of an Intra-Circuit Court split that has occurred, where *Rittmann v. Amazon.com, Inc.*, was acknowledged, then avoided, then disacknowledged by US District Courts within the 6th Circuit. *Rittmann v. Amazon.com, Inc.* has now created a split both within the 6th Circuit itself and between the 6th Circuit and eight other Circuits that have adopted this precedent.

Intra-Circuit Split

Within the 6th Circuit, the US District Court for the Michigan Eastern District cited *Rittmann v. Amazon.com, Inc.* as valid precedent in *McKinnes v. ATX Inc.*, No. 2:19-CV-12748, 2020 WL 13499605 (E.D. Mich. Dec. 14, 2020) where *McKinnes* was an Amazon DSP “Blue Panel Van” delivery driver. *McKinnes* was deemed exempt under the FAA because Amazon Flex Delivery Drivers are exempt under the FAA per *Rittmann v. Amazon.com, Inc.*

In this instant case, from the same US District Court, another Judge refused to grant recognition of *Rittmann v. Amazon.com, Inc.* or *McKinnes v. ATX Inc.* thusly denying *Rittmann v. Amazon.com, Inc.* as valid precedent within the 6th Circuit to Petitioner, an Amazon Flex Delivery Driver. Petitioner raised this argument in her Objection to the Magistrates R/R in ECF No 41 in the US District Court (Pet.App. 72a).

The US District Court for the Northern District of Ohio themselves decided against *Rittmann v. Amazon.com, Inc.* in *Walker v. Amazon Logistics, Inc.*, No. 25-cv-1840, 2025 WL 2933896 (N.D. Ohio Oct. 15, 2025) stating that *Walker*, an Amazon Flex Delivery Driver, provided no proof the packages were in interstate commerce, where the preponderance standard should have applied. (Case: 1:25-cv-01840-CEF Doc #: 15 Filed: 10/15/25 15 of 22. PageID #: 202, 204):

Walker cites two circuit court opinions in support of his position. See Doc. 10, at 2 (citing *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020) and *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10 (1st Cir. 2020)). But these decisions predate *Saxon* and *Bissonnette*. And while both of these cases involved Amazon Flex drivers like Walker, both decisions also used language that conflicts with *Saxon* and *Bissonnette*.

...

In support of his position that he is exempt under the Act, Walker states that he “engaged in the transportation of goods that moved in interstate commerce.” Doc. 10, at 2 (emphasis added). But Walker does not assert that he moved through interstate commerce while conducting his work and he does not provide any facts to support his assertion that the goods he delivered actually moved through interstate commerce.

Concurrent State Jurisdiction Over Arbitration

Under *McKinnes v. ATX Inc.*, No. 2:19-CV-12748, 2020 WL 13499605 (E.D. Mich. Dec. 14, 2020) (Federal Question-FLSA), the Amazon Delivery Service Partner (DSP) business that employed *McKinnes* the delivery driver, were both ‘persons’ situated in Michigan, and Michigan’s Arbitration Act was substituted for the FAA due to concurrent jurisdiction. Diversity of jurisdiction did not exist under *McKinnes v. ATX Inc.*

Under *Flowers Foods, Inc. v. Brock*, 608 U.S. _____ (5-28-2026), the contract provided that Colorado arbitration law was applicable as long as it was consistent with the FAA (“*This Arbitration Agreement shall be governed by the FAA and Colorado law to the extent Colorado law is not inconsistent with the FAA.*”).

Under *Southwest Airlines Co. v. Saxon*, 596 U. S. 450 (2022), from the US District Court case filings post the Supreme Court decision, at: 1:19-cv-00403 Document #: 71-1 Filed: 07/06/22 Page 8 of 40 PageID #:689, the arbitration contract wording was thus:

This Alternative Dispute Resolution Agreement (the "Agreement") is between you and Southwest Airlines Co., its parents, subsidiaries, and related entities (collectively, "Southwest Airlines"). Southwest Airlines operates in interstate commerce and this Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. ("FAA"). **To the extent the FAA is deemed not to apply (e.g., you are found to be exempt from the FAA), this Agreement shall be enforceable under the law of the State of your primary work location.**

The US District Court decision in *Southwest Airlines Co. v. Saxon*, ultimately ordered arbitration under Illinois Uniform Arbitration Act, the State *Latrice Saxon* worked for *Southwest Airlines Co.* in.

For this instant case, the Delaware Uniform Arbitration Act implies that if the complaint is not brought in the Delaware Court of Chancery, *ie.* Delaware laws are being enforced outside the State of Delaware, then the FAA is the standard to apply (10 Del. C. § 5702 (a - c)). If arbitration was truly ordered under the Delaware Uniform Arbitration Act, then it was really ordered under the FAA, necessitating resolving the intra- and inter-circuit split of *Rittmann v. Amazon.com, Inc.*

SECOND QUESTION: ILLEGAL CONTRACTS

Where, when and by whom should challenges to the legality of a contract be addressed, when arbitration is involved, where 'gateway' decisions are assigned to the Court, where severing of illegal clauses is contractually anticipated?

Most State Arbitration Laws have language like Delaware's Arbitration Law and the FAA section 2 'savings clause', provisioning for:

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, **save upon such grounds as exist at law or in equity for the revocation of any contract.**

for which, it is asserted that a contract for the illegal purpose of misclassifying workers and to subvert the FLSA, would be grounds for the revocation of any contract. Illegality of contract should be grounds that exist at law or in equity for the revocation of any contract, as courts lack jurisdiction to enforce illegal contracts.

Jackson Purchase Rural Elec. Coop. Ass'n v. Loc. Union 816, Int'l Broth. Of Elec. Workers, 646 F.2d 264, 267 (6th Cir. 1981) (*Jackson Purchase*) has been cited as valid precedent in the 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 11th and DC Circuits. *Jackson Purchase* states:

Generally, one who has himself participated in an illegal act cannot be permitted to assert in a court of justice any right founded upon or growing out of the illegal transaction.

[citing Supreme Court and 6th Circuit precedents]

Weil v. Neary, 278 U.S. 160, 174, 49 S.Ct. 144, 149, 73 L.Ed. 243 (1929) (enforcement of an illegal contract is contrary to public policy); *Gibbs and Sterrett Mfg. Co. v. Brucker*, 111 U.S. 597, 601, 4 S.Ct. 572, 574, 28 L.Ed. 534 (1884);

Boatland, Inc. v. Brunswick Corp., 558 F.2d 818, 823 (6th Cir. 1977) (on grounds of public policy, clauses in a contract which violate statutory provisions are without legal effect);.

In *Southwest Airlines Co. v. Saxon*, 596 U. S. 450 (2022) the FLSA was active in the case, but the workers were not misclassified but had a ‘wage dispute’ regarding overtime payments.

In *Flowers Foods, Inc. v. Brock*, 608 U.S. _____ (5-28-2026), the workers were alleged to have been miscategorized as Independent Distributor Franchisees in order to subvert the FLSA. That contract required worker misclassification disputes to be handled by the arbitrator. *Flowers Foods, Inc. v. Brock* should result in Angelo Brock being FAA exempt from arbitration, which should place challenges regarding worker misclassification / illegal contract within the jurisdiction of that Court since arbitration is no longer an available option. *Flowers Foods, Inc. v. Brock*’s contract provisioned that Colorado Arbitration Laws would go no further than the limitations of the FAA (“*This Arbitration Agreement shall be*

governed by the FAA and Colorado law to the extent Colorado law is not inconsistent with the FAA.”).

In this instant case, the US District Court for the Michigan Eastern District chose not to address illegality of the contract at all. In this instant case, the Amazon Flex Contract deferred specific ‘Gateway’ issues to the Court to resolve: “*the parties agree that a court of law must resolve any dispute concerning the validity and enforceability of the Agreement as a whole*”. If worker misclassification exists, then the validity and enforceability of the agreement is challenged and the US District Court was the party that was required to address this issue.

An illegal contract without an arbitration agreement is not to be enforced (see *Jackson Purchase Rural Elec. Coop. Ass’n v. Loc. Union 816, Int’l Broth. Of Elec. Workers, supra*; *Weil v. Neary, supra*; *Gibbs and Sterrett Mfg. Co. v. Brucker, supra*; *Boatland, Inc. v. Brunswick Corp., supra*).

An illegal contract with a severability clause to remove the illegal portions of the contract, would require a court to first review the contract and ‘blue pencil’ the illegal portions to ascertain if anything remains of the contract to enforce.

An illegal contract without a severability clause, but with an arbitration clause, would require every court to ascertain first if the contract is for an illegal purpose, and to not send such to arbitration, as an illegal contract does not become more enforceable if sent to arbitration. See “savings clause” language.

Whether assessing an illegal contract occurs before considering the FAA, or is addressed by FAA section 2, assessment of an illegal contract should be made before a Court takes action and sends an illegal contract to arbitration, which becomes the first step in enforcing an illegal contract.

The complex problem here is what to do with an illegal contract with both an arbitration clause and a severability clause. *New Prime Inc. v. Oliveira*, 586 U.S. 105 (2019) identified that FAA sections 1-4 have to be addressed as an integrated unit, and in order. Sections 1 and 2 must be resolved before applying section 3 to ascertain if the parties agreed to arbitrate a particular matter and before applying section 4 and sending such to arbitration. In this instant case, the US District Court skipped FAA sections 2 and 3. The FAA is more than just its exemption statute.

If a given contract illegally misclassifies workers as independent contractors, and the contract itself asserts that it applies only in the context and issues experienced by an independent contractor, and contained in the contract itself at *section 2* (Pet.App.31a-32a):

This Agreement creates an independent contractor relationship, not an employment relationship. As such, you agree that this Agreement is not a contract of employment, does not involve conditions of employment, and is not evidence of an employment relationship. As an independent contractor of Amazon you are not required to purchase or rent any products, equipment or services from Amazon as a condition of entering into this Agreement. Nothing in this Agreement will create any partnership, joint venture, agency, franchise, or employment relationship between you and Amazon. **As an independent contractor, you will not be considered as having the status of an employee of Amazon for any purpose, ...**

it can be asserted, that if the worker is really an employee, that this contract was not meant to cover any issues between the parties regarding issues under the FLSA or State labor laws that confer rights to “employees” only. Petitioner asserts, if the contract misclassified employees as independent contractors, in conjunction with section 2 of the contract, that the Amazon Flex Delivery Driver contract would be unenforceable in entirety, as the worker could not have ever agreed to arbitrate FLSA or State Labor Laws (employee only issues) (FAA section 3). This leaves just the FLSA and State Labor Laws to interpret employee-employer rights. The Petitioner was working without an employment contract, but was still an employee. In this instant case, the US District Court was assigned the duty to address challenges to the legality of the contract as a whole before engaging in enforcement actions, but abdicated their responsibility.

The “Program Policies” embedded into the Amazon Flex Contract, are a worker handbook that would apply to the work effort of any version of worker. Pet.App.41a-50a.

If this was an unenforceable illegal contract, the arbitration provisions would also become unenforceable. So the issue for the Supreme Court is to define the order of evaluating challenges to the legality of a contract before Courts take steps to enforce them. *Flowers Foods, Inc. v. Brock's* contract, placed decisions of misclassified workers within the domain of the arbitrator:

Covered Claims covered under this Arbitration Agreement include, but are not limited to: breach of contract, any claims challenging the independent contractor status of DISTRIBUTOR, claims alleging that DISTRIBUTOR was misclassified as an independent contractor, any other claims premised upon DISTRIBUTOR's alleged status as anything other than an independent contractor

This begs the issue if Court jurisdiction regarding an illegal contract could ever become the domain of an arbitrator, even by party agreement, as the first step in challenging an illegal contract should require Court dissection so that an illegal contract is not enforced under arbitration. *If a court lacks jurisdiction over an illegal contract, how could the contract ever be sent by a court to arbitration?*

Illegal worker misclassification contracts violate public policy and should be under the domain of the Court as a jurisdictional threshold issue.

III. THE DECISION WAS WITHOUT JURISDICTION AND IS VOID

In this instant case, the Michigan Eastern District refused to address the FAA exemption status of Amazon Flex Delivery Drivers, because the FAA exemption issue was deemed 'too complex to resolve' (Pet.App.21a). Arbitration was purportedly ordered under the Delaware Uniform Arbitration Act, although exclusive jurisdiction restricted enforcement to the Delaware Court of Chancery alone. The only jurisdiction available under the Delaware Uniform Arbitration Act to the US District Court was to evaluate the FAA exemption status.

To fully confirm that arbitration was ordered without jurisdiction, it is necessary to reaffirm that *Rittmann v. Amazon.com, Inc.* remains a viable precedent, which requires it be reaffirmed under *Flowers Foods, Inc. v. Brock*. A non-decision in this instant case by the US District Court, in actuality, was a rejection of the *Rittmann v. Amazon.com, Inc.* precedent. *Rittmann v. Amazon.com, Inc.* now requires validation as a precedent to confirm there was no possibility of ordering arbitration under Delaware Uniform Arbitration Act's referback to the FAA.

Courts lack jurisdiction to enforce illegal contracts. Workers who assert that they are being held to a contract that is in opposition to the FLSA, are asserting that the Court lacks jurisdiction to enforce such. For contracts subject to an arbitration clause, where workers are alleged to be misclassified, such as this

instant case and *Flowers Foods, Inc. v. Brock*, at what point should the US District Courts address whether the workers contract was for the illegal purpose of misclassifying workers? If the container contract is void, so are the embedded arbitration clauses.

New Prime, Inc. v. Oliveira, 586 U.S 105, 121 (2019) identifies that FAA sections 1-4 have to be addressed in sequential order with sections 1-4 creating a complete unit. If a worker is not exempt under the FAA, but is still subject to an illegal worker misclassifying contract, would the illegal contract be reviewed in FAA section 2 under “*shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract*”? Or should the contract be evaluated for illegality after subject-matter and personal jurisdiction are determined, before any evaluation on arbitrability?

If a worker contract classifies a worker as an independent contractor and they are found to be an employee, if the contract itself restricts itself to issues affecting independent contractors only, could it ever be stated that the worker agreed to arbitrate FLSA employee related issues which were specifically excluded from the contract? The contract would be impertinent and not controlling.

This would require careful analysis when the nature of the contract changes under FAA section 2, before shifting focus to FAA section 3 and 4. *New Prime, Inc. v. Oliveira* was clear that the FAA sections 1-4 have to be addressed in order.

Amazon's contract created a catch-all of 'everything' being subject to arbitration. Amazon then added language to the contract, consistently asserting their contract had nothing to do with employer-employee relationships or issues. This modified their catch-all of 'everything' to exclude employee issues. (*See* Pet.App.31a-32a of the Amazon Flex contract, section 2). Petitioner asserts employee issues were outside of the scope of the written contract making the written contract impertinent in the Complaint. If the issues between the parties were outside of the scope of the contract, why was the Court trying to enforce an inapplicable contract and its' arbitration clause? The order would be void.

If the contract was for an illegal purpose such that nothing remains of the contract to enforce, then if the container contract is no longer viable, there remains no arbitration clause to enforce either. The order would be void.

The US District Court lacked jurisdiction over the contract, and lacked jurisdiction to order arbitration. Should not jurisdiction over the contract or contract validity / illegality be evaluated by the Courts first after reviewing Subject-Matter jurisdiction and Personal jurisdiction?

Should not the US District Court identify if the issues before them were beyond the scope of the purported contract under FAA section 3 before sending the parties to arbitration? The US District Court did not acknowledge the argument that an illegal contract was present, and skipped FAA sections 2 and 3.

IV. CIRCUIT SPLIT AFFECTS MANY CASES

The ongoing case of *Rittmann v Amazon* was trying to determine how to define their FLSA class action class, with Amazon asserting newer workers were subject to Delaware Arbitration laws. Resolving the circuit split would resolve the issue that there has never been a viable arbitration clause, which would promote earlier resolution of the class action portion of *Rittmann v Amazon*.

An article documents 15,000 Amazon Flex Delivery Driver arbitration claims outstanding across three select States, seeking wage correction for misclassified workers one at a time. This same decision would allow consolidation and collective action.

(<https://fortune.com/2024/06/11/amazon-drivers-pay-arbitration-illinois-massachusetts-california/>).

A quarter of a million Amazon Flex delivery drivers were potentially misclassified per year. Inception of the Amazon Flex program was in 2013. Thirteen years of misclassified workers could affect upwards of 3 million workers, all being held hostage to an illegal contract, hostile to the FLSA and State labor laws, that uses arbitration agreements as “cloaking devices”, precluding consolidation and class action. Handling class actionable issues one at a time in secret, prevents accountability to unknowing class members, and keeps these unlawful actions hidden from public view.

V. ILLEGAL CONTRACTS AFFECTS MANY CASES

Although Petitioner made the arguments for the contract being for the illegal purpose of worker misclassification, thwarting the FLSA and State Labor laws in the Complaint (ECF No. 9), in the answer to Amazon's Motion to Compel (ECF No. 26), in the Objection to the Magistrates R/R (ECF No 41), in the Motion for Reconsideration (ECF No. 50), this issue remained unacknowledged. The lack of acknowledgement by the US District Court was raised in the Sixth Circuit Court of Appeals asserting judicial bias. Lastly, illegal contract was raised for the Rehearing request *en banc*. The Courts seem content to not address worker misclassification.

A framework for the order of judicial analysis surrounding illegal contracts, is pertinent to many cases. A Supreme Court decision identifying the process and order for addressing a worker misclassification illegal contract, in conjunction with arbitration laws, FAA Section 2's role, as well as whether the Court or an Arbitrator gets to decide if a worker's contract was for the illegal purpose of violating the FLSA and State labor laws is needed. Additionally sought is who, the Court or the arbitrator, gets to determine the effect or implementation of any severability clause to an illegal contract.

An illegal contract is a jurisdictional hurdle that should be addressed as early in the case as possible, and since it is a jurisdictional hurdle, it would seem that the Court should be the party to address it before arbitration is considered.

VI. UNFAIR COMPETITIVE ADVANTAGE

Other commercial carrier businesses are competitively harmed by Amazon's misclassification of delivery drivers, as Amazon shifts their mileage expense burden uncompensated upon the Amazon Flex delivery driver. United Parcel Service, the United States Postal Service, and FedEx all compensate their similarly classed '*personal vehicle delivery drivers*' as hourly employees with mileage reimbursement. Hourly wages are similar across all last-mile delivery drivers. Only the Amazon Flex Delivery Driver is classified as an independent contractor, and not reimbursed Amazon's business mileage, reducing misclassified Amazon Flex Delivery Drivers compensation to less than half of the industry standard.

If Amazon employs 250,000 Amazon Flex Delivery Drivers nationwide (50 States x 5,000 workers per state from the 15,000 arbitration claims spread across three states article), and Amazon displaces \$22,000 in mileage expense per driver by failure to reimburse (Petitioner's personal experience), Amazon has created a competitive advantage of \$550,000,000 against their competitors, and against the standard brick-and-mortar retail stores by theft of wages from their delivery drivers. Amazon has been harming their workers and other businesses by potentially \$550 million per year since 2013 due to unfair competition.

CONCLUSION

Many 'last-mile' delivery driver cases are vested in the outcome of the *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 916-19 (9th Cir. 2020) inter-circuit split. A decision as to the FAA exemption status of Amazon Flex Delivery Drivers will benefit cases beyond Amazon. Additionally, defining whether Amazon Flex Delivery Driver contracts ever contained any viable arbitration clause will assist other unfairly treated Amazon drivers towards case consolidation and class action suits like *Rittmann v. Amazon.com, Inc.* A Supreme Court decision on these two questions will lend towards consistent outcomes across all States.

Defining where and when an illegal contract should be addressed in respect to worker contracts with arbitration clauses, will assist workers in securing worker protections under the FLSA and individual State's Labor protections.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Carol Ann McBratnie, pro se
1130 Larkmoor Blvd
Berkley, MI 48072
248-546-5945
cammsnnp@gmail.com

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