No. 24-____

IN THE

Supreme Court of the United States

FLOWERS FOODS, INC., ET AL.,
Petitioners,

v.

ANGELO BROCK,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING

Petitioners Flowers Foods, Inc., Flowers Bakeries, LLC, and Flowers Baking Co. of Denver, LLC (collectively, "Flowers") were Defendants-Appellants in the Tenth Circuit.

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

CORPORATE DISCLOSURE STATEMENT

Petitioner Flowers Baking Co. of Denver, LLC is a wholly owned subsidiary of Petitioner Flowers Bakeries, LLC, which is itself a subsidiary of Petitioner Flowers Foods, Inc., the ultimate parent company. Petitioner Flowers Foods, Inc. is a publicly held corporation whose shares are traded on the New York Stock Exchange.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

Brock v. Flowers Foods, Inc., et al., No. 1:22-cv-02413-CNS-CYC (D. Colo.) (motion to compel arbitration denied May 16, 2023).

Brock v. Flowers Foods, et al., No. 23-1182 (10th Cir.) (denial of motion to compel arbitration affirmed Nov. 12, 2024; petition for rehearing and rehearing en banc denied Dec. 9, 2024).

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The District Court's order denying Petitioners' motion to compel arbitration is reported at 673 F. Supp. 3d 1180 and reproduced at Pet.App.37a-57a. The Tenth Circuit's opinion affirming the District Court's order denying Petitioners' motion to compel arbitration is reported at 121 F.4th 753 and reproduced at 1a-34a.

JURISDICTION

The Tenth Circuit issued its decision in this case on November 12, 2024. It denied Petitioners' timely petition for rehearing en banc on December 9, 2024. This petition is timely because it is filed on February 14, 2025, within ninety days of that decision. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

9 U.S.C. § 1 provides:

> "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

INTRODUCTION

Almost a century ago, Congress enacted the Federal Arbitration Act ("FAA") "to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). In recent years, however, that hostility has started to return as courts have eroded the FAA's protections through ever-expanding constructions of FAA § 1, which provides that the FAA does not "apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Notwithstanding this Court's repeated instruction that this exemption should be construed "narrow[ly]," *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001), some courts have extended § 1 to workers who have nothing to do with interstate transportation and simply deliver locally goods that have traveled over state lines. As a result, the Courts of Appeals are now split over whether workers who make such local deliveries are covered by § 1. *See, e.g.*, *Lopez v. Cintas Corp.*, 47 F.4th 428, 432 (5th Cir. 2022) ("sister circuits that have addressed this issue have come out different ways").

In the decision below, the Tenth Circuit expressly deepened that split by refusing to enforce an arbitration agreement between Petitioner Flowers and one of its Independent Distributors, which is owned by Respondent Brock. Brock delivers Flowers products from a Colorado warehouse to his Colorado customers. He never crosses state lines, nor does he load cargo onto or unload cargo from vehicles traveling

across borders. Nevertheless, the Tenth Circuit held that Brock is "engaged in … interstate commerce" for purposes of § 1, focusing on the goods Brock carries rather than the work Brock performs. In the Tenth Circuit's view, so long as Brock's "intrastate delivery route forms the last leg of the *products'* continuous interstate route," then *Brock* is engaged in interstate commerce. Pet.App.26a (emphasis added).

In focusing on the goods' travel instead of Brock's work, the Tenth Circuit adopted the approach of the First and Ninth Circuits, both of which hold that workers can fall under § 1 simply because the goods they handle travel across state lines. *See, e.g.*, *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 22 (1st Cir. 2020) (holding § 1 applicable to "workers moving goods or people destined for, or coming from, other states—even if the workers were responsible only for an intrastate leg of that interstate journey"); *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904, 917, 919 (9th Cir. 2020) (holding § 1 applicable to workers who "complete the delivery of goods" shipped "across state lines," "even if they do not cross state lines to make their deliveries"). As the Tenth Circuit's multi-factorial, diagram-heavy reasoning illustrates, this approach is complex and far divorced from the text of § 1. The Eleventh and Fifth Circuits, by contrast, recognize that § 1 "is directed at what the class of workers is engaged in, and not what it is carrying." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021); *see also Lopez*, 47 F.4th at 430 (same). So in those courts, only workers who are themselves engaged in a channel of interstate commerce are covered by § 1. This split is both acknowledged and entrenched. *See, e.g.*, *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th

1152, 1161 (9th Cir. 2024) (recognizing that "courts of appeals have reached different conclusions" in cases involving the "purely intrastate shipment of goods to the terminus of a supply chain").

The question presented is also critically important. The proliferating division of authority is antithetical to the uniform rule Congress designed the FAA to secure. The resulting threshold litigation—which can take years—undercuts the efficiency arbitration is designed to promote. And the goods-focused approach of the Tenth, Ninth, and First Circuits, if let stand, will void arbitration agreements in almost every sector of the economy, pulling every worker who handles goods moving in interstate commerce—including warehouse workers and retail shelf stockers who never touch a vehicle at all—into § 1's orbit.

That result is irreconcilable with this Court's precedents. In *Southwest Airlines Co. v. Saxon*, this Court explained that whether a worker falls within § 1 turns on "what [that worker] does," and held that only those workers who are "actively engaged in transportation of … goods across borders via the channels of foreign or interstate commerce" fall within § 1. *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 455-56, 458 (2022) (internal quotation marks omitted). The Court reiterated this holding in *Bissonnette v. LePage Bakeries Park Street, LLC*, and expressly rejected the suggestion that "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration." 601 U.S. 246, 256 (2024). In both cases, the Court reserved the question presented here. *Id.* at 252 n.2, 256; *Saxon*, 596 U.S. at 457 n.2.

Respectfully, the time has come for this Court to answer it. The Tenth Circuit's extension of § 1 to workers who work exclusively intrastate and never touch a vehicle traveling across borders is the low-water mark in the ever-expanding arena of § 1 litigation. This case is also an ideal vehicle, because there is no dispute about Brock's role. Certiorari should be granted.

STATEMENT

A. Statutory Background.

1. Since 1925, the Federal Arbitration Act has protected arbitration agreements by requiring courts to enforce them. The Act's primary substantive provision, § 2, provides that arbitration agreements "in any … contract evidencing a transaction involving commerce … shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. That provision sweeps broadly. The phrase "involving commerce" "signals an intent to exercise Congress' commerce power to the full." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277 (1995). Moreover, § 2's "text reflects the overarching principle that arbitration is a matter of contract" and that "courts must rigorously enforce arbitration agreements according to their terms." *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (internal quotation marks omitted).

2. Section 1 of the Act creates a limited exemption, providing that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. This Court has repeatedly cautioned against construing that provision broadly.

To start, in *Circuit City*, the Court held that § 1 requires "a narrow construction" and rejected an interpretation of § 1 that would extend its "residual clause"—*i.e.*, the "any other class of workers engaged in foreign or interstate commerce" language—to *all* "contracts of employment." 532 U.S. at 109, 118. Instead, the Court held that the clause "should be read to give effect to the terms 'seamen' and 'railroad employees,' and should itself be controlled and defined by reference to the enumerated categories of workers which are recited just before it." *Id.* at 114-15. Consistent with those principles, the Court held that § 1 "exempts from the FAA *only* contracts of employment of *transportation workers*." *Id.* at 119 (emphases added).

Next, in *Saxon*, the Court delineated a two-step analysis for assessing whether a worker falls within § 1's residual clause. 596 U.S. at 455. At step one, courts must "defin[e] the relevant 'class of workers'" by reference to "what [the workers] do[]." *Id.* at 455-56. At step two, courts must "determine whether that class of workers is 'engaged in foreign or interstate commerce'" within the meaning of § 1. *Id.* at 455. To qualify, a worker "must *at least* play a direct and necessary role in the free flow of goods across borders." *Id.* at 458 (emphasis added) (internal quotation marks omitted). "Put another way," a worker "must be actively engaged in transportation of … goods across borders via the channels of foreign or interstate commerce." *Id.* (internal quotation marks omitted).

Applying this framework to an airport baggage handler, the Court defined the relevant class of workers to include workers who "load and unload cargo on and off planes traveling in interstate

commerce." *Id.* at 457. The Court then concluded that this class of workers is engaged in foreign or interstate commerce because the workers are "intimately involved with the commerce (*e.g.*, transportation) of that cargo." *Id.* at 458-59. "There could be no doubt that interstate transportation is still in progress, and that a worker is engaged in that transportation," the Court explained, "when she is 'doing the work of unloading' or loading cargo from a vehicle carrying goods in interstate transit." *Id.* The Court expressly did not decide, however, whether workers who move goods only intrastate in the context of a larger interstate or international supply chain, like "'last leg' delivery drivers" or "food delivery drivers," also fall under § 1. *Id.* at 457 n.2.

Finally, in *Bissonnette*, the Court further clarified the § 1 inquiry by holding that a worker "need not work in the transportation industry to fall within the exemption." 601 U.S. at 256. The Court reiterated, however, that transportation workers are limited to those "who [are] 'actively' 'engaged in transportation of … goods across borders via the channels of foreign or interstate commerce'" and who "at least play a direct and 'necessary role in the free flow of goods' across borders." *Id.* (ellipsis in original) (quoting *Saxon*, 596 U.S. at 458). The Court accordingly dismissed the suggestion that "virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration." *Id.*; *see also id.* ("We have never understood § 1 to define the class of exempt workers in such limitless terms."). But the Court again reserved the question whether workers who "do not drive across state lines" or engage with vehicles that do are covered by § 1. *Id.*

at 252 n.2; *see also id.* at 256 ("We express no opinion on any alternative grounds in favor of arbitration raised below, including that petitioners … are not 'engaged in foreign or interstate commerce' within the meaning of § 1 because they deliver baked goods only in Connecticut.").

B. Factual and Procedural Background.

1. Flowers Foods, Inc. "produces 'fresh breads, buns, rolls, and snack cakes' that are sold in supermarkets, drug stores, and convenience stores throughout the United States." Pet.App.3a. Through its baking subsidiaries, Flowers divides the market for its products into geographic territories and sells exclusive distribution rights within each territory to independent companies it calls "Independent Distributors." App.47-49.[1] Independent Distributors own the right to market, sell, and distribute Flowers products within their respective territories. App.49.

2. Brock is the owner of a Colorado corporation—Brock, Inc.—that purchased the rights to market, sell, and distribute Flowers products in territories entirely within Colorado. *See* App.47-49. Under Flowers' "direct-store-delivery system," Brock, Inc. orders products from Flowers. Pet.App.4a-5a. Flowers then delivers those products to a warehouse in Colorado, where they are unloaded by Flowers. Pet.App.5a & n.3. Brock then picks up the products from the warehouse and delivers them to his customers. Pet.App.5a. Most of the products Brock delivers are shipped to the warehouse from out of state. *Id.* But

[1] Citations to "App." are to Petitioners' appendix filed in the Tenth Circuit.

Brock's territory is entirely contained within the State of Colorado; he never crosses state lines to deliver Flowers products. Pet.App.4a, 12a. Nor does he unload products when they arrive at the warehouse from out of state. Pet.App.5a.

Flowers and Brock, Inc.'s relationship is governed by a Distributor Agreement that incorporates an Arbitration Agreement. App.67 (Distributor Agreement), App.84-86 (Arbitration Agreement). The Arbitration Agreement provides that "any claim, dispute, and/or controversy except as specifically excluded herein … shall be submitted to and determined exclusively by binding arbitration." App.84. The covered claims include "any … claims premised upon [an Independent Distributor's] alleged status as anything other than an independent contractor." App.85. Brock signed the Arbitration Agreement on behalf of Brock, Inc. and also signed a separate Personal Guaranty confirming that he was personally "subject to the Arbitration Agreement." App.79, 86.

3. In September 2022, Brock filed a class and collective action complaint in federal district court alleging that Flowers misclassified him and other owners of Independent Distributors as independent contractors in violation of Colorado and federal law. App.5, App.19-21. Flowers moved to dismiss Brock's lawsuit in favor of arbitration or, alternatively, to stay the lawsuit pending arbitration. App.26-46. As relevant here, Brock responded that he cannot be compelled to arbitrate under the FAA because he qualifies as a "transportation worker[]" under § 1. App.116-22.

The District Court agreed that Brock falls within § 1 and held the FAA inapplicable on that ground. Pet.App.52a. The court reasoned that Brock "is actively engaged in the transportation of Flowers' products across state lines into Colorado" because he "plac[es] orders for products that arrive from out-of-state bakeries and then deliver[s] those products to his Colorado customers." Pet.App.50a. In so ruling, the District Court relied on First and Ninth Circuit precedent and expressly rejected Fifth and Eleventh Circuit precedent. Pet.App.51a-52a & nn.6-7. The District Court also denied Flowers' request to compel arbitration as a matter of state law, interpreting the Arbitration Agreement to not allow for state-law arbitration. Pet.App.53a-55a.

4. Flowers appealed the denial of the motion to compel arbitration. Pet.App.8a; *see* 9 U.S.C. § 16(a)(1)(B). The Tenth Circuit affirmed, agreeing with the District Court that Brock is covered by § 1's transportation worker exemption. In so ruling, the court purported to follow *Saxon*'s two-step approach to determine "whether a class of workers making intrastate deliveries can qualify as engaging in interstate commerce under § 1 of the FAA." Pet.App.12a. At step one, it defined the class of workers as those who "deliver Flowers goods in trucks to their customers, by loading and unloading Flowers' bakery products." Pet.App.46a. These workers, the court recognized, do not "cross state lines to deliver goods." Pet.App.12a. And they do not load or unload goods onto or from vehicles traveling interstate. Pet.App.5a.

At step two, however, the Tenth Circuit shifted its focus from Brock's work (which was removed from

interstate transportation) to the goods Brock handled (most of which had moved through an interstate supply chain). Relying on cases from the First and Ninth Circuits, the court held that the § 1 inquiry turns on whether the worker's "intrastate route formed a constituent part of the goods' interstate journey or an entirely separate local transaction." Pet.App.18a. The court then identified three non-exclusive factors as central to that inquiry in this case: "(1) the buyer-seller relationship between Flowers and Brock; (2) the buyer-seller relationship between Brock and Brock's customers, and (3) the buyer-seller relationship, if any, between Flowers and Brock's customers." Pet.App.18a-19a & n.5. Deeming the third factor "key" to resolving this case—and deploying multiple diagrams to illustrate why—the court evaluated Brock's Distributor Agreement and concluded that "Flowers's real interest lies in delivering the baked goods to … the various retail stores on Brock's route, not Brock, Inc." Pet.App.19a-22a. The Tenth Circuit thus held that "Brock's intrastate delivery route forms the last leg of the products' continuous interstate route," and that Brock was "engaged in commerce" for purposes of § 1. Pet.App.26a.

In so holding, the Tenth Circuit rejected Flowers' argument that it should follow the Fifth Circuit's reasoning in *Lopez* , stating simply that it found *Lopez* "unpersuasive." Pet.App.29a. The court did not address Flowers' alternative argument that the Arbitration Agreement is enforceable under Colorado law, holding that it lacked jurisdiction to consider an interlocutory appeal on that ground. Pet.App.30a.

REASONS FOR GRANTING THE WRIT

The Courts of Appeals are split over whether and when workers who move goods on a purely *intrastate* basis are "engaged in foreign or interstate commerce" under § 1. The Eleventh and Fifth Circuits resolve this question by focusing on the activities of the workers, rather than the goods they carry. As a result, these Circuits apply § 1 only when workers directly engage with the channels of interstate transportation. The Tenth, Ninth, and First Circuits, by contrast, focus on the goods. As a result, they interpret § 1 to encompass all workers who handle goods that are traveling in an interstate supply chain—and so sweep in workers far removed from the channels of interstate transportation. Litigation over this frequently recurring issue is proliferating, undermining the FAA's purpose of uniform, speedy, and efficient dispute resolution. The decision below is wrong. And this case is an ideal vehicle for this Court to finally answer the question it left open in *Saxon* and *Bissonnette*. This Court should grant certiorari.

I. THIS CASE IMPLICATES A RECOGNIZED, ENTRENCHED CIRCUIT SPLIT.

The Tenth, Ninth, and Fifth Circuits have each acknowledged a circuit conflict regarding whether workers who neither cross state lines nor directly engage with the channels of interstate transportation are "transportation workers" exempt from the FAA under § 1. *See Lopez*, 47 F.4th at 432 ("sister circuits that have addressed this issue have come out different ways"); *Ortiz*, 95 F.4th at 1161 ("courts of appeals have reached different conclusions" in cases involving the "purely intrastate shipment of goods to the terminus

of a supply chain"); Pet.App.13a (acknowledging circuit disagreement on this issue); *see also Bissonnette v. LePage Bakeries Park St., LLC*, 123 F.4th 103, 106 n.1 (2d Cir. 2024) (*Bissonnette II*) (explaining that circuit courts have reached "opposite conclusion[s]" on this issue).

At least two circuit courts—the Eleventh and Fifth Circuits—have held that those classes of workers do not have a sufficiently direct nexus to interstate transportation. At least three others—the Tenth, Ninth, and First—have held the opposite, reasoning that handling goods that are moving through an interstate supply chain is sufficient to bring those workers within § 1. That split is deeply entrenched. Only this Court can resolve it and provide much-needed guidance on the limits of FAA § 1.

1. The Eleventh and Fifth Circuits have heeded this Court's instruction in *Circuit City* and adopted a "narrow construction" of § 1, 532 U.S. at 118, that requires workers to cross state lines or directly engage with the means of interstate transportation to fall within the exemption.

a. In *Hamrick*, the Eleventh Circuit held that workers engaged in the purely intrastate movement of goods that were traveling in interstate commerce did not fall within § 1, because they did not "actually engage in foreign or interstate commerce." 1 F.4th at 1349-50. It is not enough, the court recognized, for workers to merely handle or locally transport "*goods* that … have crossed state lines." *Id.* "Section one is directed at what the class of workers is engaged in, and not what it is carrying." *Id.* at 1350. Although *Hamrick* predated *Saxon*, *Saxon* expressed no opinion

on this issue so *Hamrick* remains controlling. *See, e.g.*, *Nunes v. LaserShip, Inc.*, No. 22-cv-2953, 2023 WL 6326615, at *3 (N.D. Ga. Sept. 28, 2023) ("*Saxon* does not overrule *Hamrick*."); *Pasche v. Total Quality Logistics, LLC*, No. 8:23-cv-01812, 2024 WL 4234937, at *3 (M.D. Fla. Sept. 19, 2024) (treating *Hamrick* as controlling).

Under the Tenth Circuit's rule, *Hamrick* would have come out the other way. The goods at issue in *Hamrick* were traveling through an interstate supply chain, and the *Hamrick* drivers' intrastate delivery of those goods was "the last leg of the products' continuous interstate route." Pet.App.26a. Conversely, this case would have come out the other way under the Eleventh Circuit's rule because Brock, like the drivers in *Hamrick*, engaged in only the intrastate delivery of goods. *Hamrick*, 1 F.4th at 1351.

b. In *Lopez*, the Fifth Circuit joined the Eleventh in a case involving a driver who "picked up items from a Houston warehouse (items shipped from out of state) and delivered them to local customers." 47 F.4th at 430. The driver, the court observed, was exactly the type of worker *Saxon* had expressly declined to address—*i.e.*, one "further removed from the channels of interstate commerce or the actual crossing of borders." *Id.* at 432 (quoting *Saxon*, 596 U.S. at 457 n.2). Accordingly, the Fifth Circuit undertook to decide "whether, after *Saxon*, a class of workers a step removed from the airline cargo loader in *Saxon*"—like a "last-mile driver"—"is 'engaged in foreign or interstate commerce.'" *Id.* (quoting FAA § 1). As the court recognized, "circuits that have addressed this issue have come out different ways." *Id.*

The Fifth Circuit held that such workers are not covered by § 1. In reaching that result, the court began with this Court's holdings that § 1 covers only those with "'active employment' in interstate commerce," *id.* (quoting *Circuit City*, 532 U.S. at 115-16); that "transportation workers must be actively engaged in transportation of … goods across borders via the channels of foreign or interstate commerce," *id.* at 433 (quoting *Saxon*, 596 U.S. at 458); and that they "must at least play a direct and 'necessary role in the free flow of goods' across borders," *id.* (quoting *Saxon*, 596 U.S. at 458). Applying those principles, the court concluded that "local delivery drivers" lack a sufficiently "'direct and necessary role' in the transportation of goods across borders" because they are not "actively engaged in transportation of those goods across borders." *Id.*

Lopez, like *Hamrick*, would have come out differently in the Tenth Circuit. And in the Fifth Circuit, Brock would not fall within § 1. Like Lopez, Brock "picked up items from a [Colorado] warehouse (items shipped from out of state) and delivered them to local customers," *id.* at 430, and neither loaded onto or unloaded goods from vehicles traveling interstate, *see* Pet.App.5a.

2. The Tenth, Ninth, and First Circuits apply a different rule: They focus on the goods' journey, not the worker's work. According to these courts, § 1 covers any worker who handles a good that is in any part of an interstate journey.

a. This has long been the rule in the Ninth Circuit. In *Rittmann*, the Ninth Circuit considered § 1 claims by plaintiffs who made "'last-mile' deliveries of

products from Amazon warehouses to the products' destinations," almost always without crossing state lines. 971 F.3d at 907. The court concluded that these drivers "belong to a class of workers engaged in interstate commerce" under § 1 because "the Amazon packages they carry are goods that remain in the stream of interstate commerce until they are delivered." *Id.* at 915. In the court's view, those goods' stopover at a warehouse is "simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys." *Id.* at 916. "[W]orkers employed to transport goods that are shipped across state lines," the court reasoned, are "transportation workers"—regardless of whether they cross state lines or directly interact with vehicles that do. *Id.* at 910.

The Ninth Circuit reaffirmed that holding in *Carmona Mendoza v. Domino's Pizza, LLC*, 73 F.4th 1135, 1137 (9th Cir. 2023), and *Ortiz*. In *Carmona Mendoza*, the court doubled down on the proposition that the § 1 inquiry should focus on the transit of the goods a worker carries, holding that drivers who delivered pizza ingredients to in-state franchisees were exempt from federal arbitration under § 1 because "the goods … were inevitably destined" for the franchisees "from the outset of the interstate journey." *Id.* at 1138. The Ninth Circuit then went further in *Randstad*, holding that a worker in a warehouse that stored goods that had traveled interstate fell within § 1. 95 F.4th at 1162. The court reasoned that although the worker did not transport goods or interact with vehicles traveling interstate, he nonetheless played a "'direct and necessary' role in the interstate commerce of goods" because he "ensured

that goods would reach their final destination by processing and storing them while they awaited further interstate transport." *Id.* As these decisions made even clearer, the Ninth Circuit treats any movement of goods that have traveled in interstate commerce—before, during, or after their stay at a warehouse—as sufficient to trigger § 1.

b. Similarly, in *Waithaka*, the First Circuit reasoned that last-mile drivers fall within § 1 because they are "workers moving goods or people destined for, or coming from, other states—even if the workers were responsible only for an intrastate leg of that interstate journey." 966 F.3d at 22. The First Circuit, like the Ninth Circuit, thus treats as dispositive whether a worker is "transport[ing] goods … within the flow of interstate commerce," without regard to whether the worker "physically cross[es] state lines" or engages with vehicles that do. *Waithaka*, 966 F.3d at 13; *see Immediato v. Postmates, Inc.*, 54 F.4th 67, 78-79 (1st Cir. 2022) (holding that the chain of interstate commerce is broken when "goods come to rest at local restaurants" but that "the temporary storage of Amazon products in warehouses before drivers deliver them to customers" did not prevent the drivers in *Waithaka* from qualifying for § 1's exemption). The First Circuit reaffirmed that principle in *Fraga v. Premium Retail Servs., Inc.*, 61 F.4th 228, 234-35 (1st Cir. 2023).

c. The Tenth Circuit's approach, adopted below, is in accord. The court acknowledged the split over whether "drivers who make the last intrastate leg of an interstate delivery route … are directly engaged in interstate commerce," and expressly adopted the Ninth and First Circuits' approach. Pet.App.13a, 18a.

In the Tenth Circuit, as in those Circuits, any worker who plays a role in a good's "continuous interstate journey" falls within § 1. Pet.App.13a, 26a.

* * *

In the Fifth and Eleventh Circuits, workers must themselves be "engaged in foreign or interstate commerce" for § 1 to apply; merely moving goods through the local component of an interstate supply chain is insufficient. In those jurisdictions, workers like Brock are not "transportation workers" subject to § 1. But in the Tenth, Ninth, and First Circuits, § 1 covers anyone who transports—or even handles—goods moving continuously in interstate commerce. In those jurisdictions, even workers who *never touch a vehicle*—much less transport goods across state lines—qualify as "transportation workers" "engaged in interstate commerce" and exempt from the FAA. *See, e.g.*, *Ortiz*, 95 F.4th at 1157-58, 1163, 1166. This Court expressly reserved this question in both *Saxon* and *Bissonnette*. *Saxon*, 596 U.S. at 457 n.2; *Bissonnette*, 601 U.S. at 252 n.2. And the division of authority has only solidified in the interim. The time has come for this Court to resolve this acknowledged split and restore order to § 1 jurisprudence.

II. THE QUESTION PRESENTED IS IMPORTANT AND FREQUENTLY RECURRING.

In passing the FAA, Congress aimed "to reverse the longstanding judicial hostility to arbitration," *Gilmer*, 500 U.S. at 24, and set out a uniform and "liberal federal policy favoring arbitration agreements," *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). This split, however, is the definition of disuniformity. It is generating more and more

litigation over the scope of the § 1 exemption—litigation that is actively undermining the FAA's core goals. And the erroneous reasoning of a growing majority of circuits threatens to blow a hole through the FAA, sweeping any worker who touches goods into § 1's supposedly narrow exemption.

1. To begin, geographic disparity is antithetical to the uniform federal policy the FAA was designed to impose. Before the FAA, different jurisdictions treated arbitration agreements differently. *See Southland Corp. v. Keating*, 465 U.S. 1, 13-14 (1984) (describing how some state "courts were bound by state laws inadequately providing for" the enforcement of arbitration agreements). But Congress passed the FAA to ensure that arbitration agreements would be respected by courts in California, Colorado, and New Hampshire to the same extent they are by courts in Texas and Georgia. *See id.* at 15 (recognizing that Congress did not make the "right to enforce an arbitration contract … dependent for its enforcement on the particular forum in which it is asserted"). The entrenched split on the question presented—which means that the enforceability of an arbitration agreement depends on the jurisdiction in which a lawsuit is filed—is exactly the kind of lack of uniformity the FAA was designed to avoid.

2. Uncertainty in the law is also particularly damaging in the FAA context because it undermines the benefits of arbitration, which center on the "economics of dispute resolution." *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009). Parties frequently choose arbitration because it results in "lower costs" and "greater efficiency and speed." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010).

But they only get those benefits if federal courts enforce agreements to arbitrate. The FAA therefore envisions "an expeditious and summary hearing" on motions to compel arbitration. *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 23. Extended threshold litigation about the applicability of the FAA "unnecessarily complicate[s] the law and breed[s] litigation from a statute that seeks to avoid it." *Allied-Bruce Terminix*, 513 U.S. at 275.

Unfortunately, that is precisely what has happened in this case—and is happening across the country as parties and courts grapple with the question *Saxon* and *Bissonnette* left open. *See, e.g.*, *Peter v. Priority Dispatch, Inc.*, 681 F. Supp. 3d 800, 801-03 (S.D. Ohio 2023), *appeal filed*, No. 23-3637 (6th Cir.); *Chambers v. Maplebear, Inc.*, No. 21-CV-7114, 2024 WL 3949344, *3-7 (S.D.N.Y. Aug. 27, 2024), *appeal filed*, No. 24-2415 (2d Cir.). The availability of interlocutory appeals under the FAA makes these disputes especially time-consuming. *See* 9 U.S.C. § 16(a)(1)(B). And parties are regularly spending *years* in threshold litigation about arbitrability—including discovery and mini-trials on the threshold § 1 question—with no progress toward resolution on the merits. *See Bissonnette II*, 123 F.4th at 106-07 (remanding for discovery on arbitration issue more than 5 years after the case was filed).

3. Worse, until the Court takes up the issue, in the Tenth, Ninth, and First Circuits—as well as in any other courts that adopt their approach—many workers and their employers have lost the right to opt into arbitration's efficiencies. In the modern economy, virtually all goods move in interstate commerce at some point in their lifespans. And almost every

business must at least occasionally move or handle such goods. The Tenth, Ninth, and First Circuits' reading of § 1 thus fundamentally transforms the "narrow" exemption the Court described in *Circuit City*, 532 U.S. at 118, into a gaping hole that could nullify otherwise valid arbitration agreements in all manner of employment contracts.

Consider, for example, a newspaper-company employee who picks up out-of-state papers from a central dispatch and delivers them to local customers. *Reyes v. Hearst Commc'ns, Inc.*, No. 21-cv-3362, 2021 WL 3771782 (N.D. Cal. Aug. 24, 2021). The employee in a manufacturer's logistics department or warehouse who packages and labels goods to start their interstate-supply chain journey without transporting them at all. Or the retail store employee who moves unloaded goods from the store dock to the shelves. *Bissonnette* made clear that this Court has "never understood § 1 to define the class of exempt workers in such limitless terms" as to encompass these kinds of workers. 601 U.S. at 256. But until this Court steps in, that is exactly the rule that prevails throughout New England and the Western United States.

4. For these and similar reasons, this Court has regularly stepped in to resolve disagreements among the lower courts on the proper interpretation of § 1, *see, e.g.*, *Bissonnette*, 601 U.S. 246; *Saxon*, 596 U.S. 450; *New Prime Inc. v. Oliveira*, 586 U.S. 105 (2019)—and of the FAA more broadly, *see, e.g.*, *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023); *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019). It should do so again here. The split over the question presented is ripe for this Court's resolution, with multiple published

opinions from Courts of Appeals on each side. *See supra* Part I; *see also Amazon.com v. Miller*, 144 S. Ct. 1402 (2024) (Kavanaugh, J., dissenting from denial of petition). And until the Court intervenes, a lack of uniformity will prevail and wasteful, threshold litigation will continue apace—denying parties the speedy, inexpensive dispute resolution for which they contracted and which the FAA was designed to ensure.

III. THE DECISION BELOW IS WRONG.

Review is also warranted because the Tenth Circuit's unduly expansive reading of § 1 contravenes the statutory text and this Court's precedents.

1. The text of § 1 extends only to "class[es] of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. That language "is directed at what the workers is engaged in, and not what it is carrying." *Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1350 (11th Cir. 2021). In particular, "[t]he word 'workers' directs the interpreter's attention to 'the *performance* of work.'" *Saxon*, 596 U.S. at 456 (quoting *New Prime*, 586 U.S. at 116). And "the word 'engaged' … similarly emphasizes the actual work that the members of the class, as a whole, typically carry out." *Id.* (citation omitted). Accordingly, "to fall within the exemption, the workers must be connected not simply to the goods, but to the act of moving those goods across state or national borders." *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020) (Barrett, J.)

2. Although this Court has twice reserved the question this case presents, *see Saxon* 596 U.S. at 457 n.2, *Bissonnette*, 601 U.S. at 252 n.2, the Fifth Circuit correctly recognized that its answer "flows from the Court's elaboration in *Saxon* … on what it means to be

'engaged in' 'interstate commerce,'" *Lopez*, 47 F.4th at 432. As *Saxon* explained, "to be 'engaged' in something means to be 'occupied,' 'employed,' or 'involved' in it." 596 U.S. at 457. Accordingly, to qualify for § 1's exemption, a class of workers must be "actively" and "directly involved in transporting goods across state or international borders"—either by carrying them across borders or by otherwise being "intimately involved with" cross-border transportation. *Id.* at 457-58. Cargo loaders for Southwest Airlines fit that description. *Id.* Workers like Brock—who deliver goods entirely intrastate and who do not interact with vehicles moving across borders—lack the "active[]," "direct," or "intimate[]" connection with interstate transportation needed to trigger § 1. *Id.* at 458.

Bissonnette confirmed that this Court meant what it said in *Saxon*. Section 1, *Bissonnette* reiterated, is limited to classes of workers who are "actively" or "direct[ly]" involved with interstate or foreign transportation. 601 U.S. at 256. "These requirements" mean that it is not the case, for example, "that virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration" under § 1. *Id.* They thus protect against "'any attempt to give the provision a sweeping, open-ended construction,' instead limiting § 1 to its appropriately 'narrow' scope." *Id.* (quoting *Circuit City*, 532 U.S. at 118); *see also id.* ("We have never understood § 1 to define the class of exempt workers in such limitless terms.").

Taking those limitations seriously, this should have been an easy case, because Brock belongs to a

class of workers who have no "active[]" or "direct[]" role in interstate or foreign transport. *Id.* Workers like Brock deliver goods only intrastate without loading, unloading, or otherwise interacting with the instruments of interstate transportation or interstate transportation itself. It is the drivers who cross state lines, not Brock, who unload and sort Flowers' baked goods in a Colorado warehouse; Brock picks them up pre-sorted and loads them into his vehicle for local delivery only. Pet.App.5a.

There is functionally no difference between the actual transportation work Brock performs and the transportation work of a local pizza delivery driver. Both pick up goods from a central spot and transport them locally. The two are distinguishable only by the journey of the goods they deliver. But it is not enough that the *goods* Brock transports traveled through an interstate supply chain, because § 1's text is trained on the worker's work, not the good's travel (or the employer's industry). *See Bissonnette*, 601 U.S. at 252 ("[T]here is no … requirement" that "a transportation worker must work for a company in the transportation industry to be exempt under § 1"); *Wallace*, 970 F.3d at 802 ("[W]orkers must be connected not simply to the goods, but to the act of moving those goods across state or national borders."). And if a good's travel is the (non-textual) touchstone of § 1 then nothing distinguishes Brock from "pet shop employees" or "grocery store clerks" who move goods in the interstate supply chain to their final destination—a result this Court has forcefully rejected. *Bissonnette,* 601 U.S. at 256.

3. The Tenth, Ninth, and First Circuits' contrary rule reflects precisely the sort of "sweeping, open-

ended construction" of § 1 that this Court has warned against since *Circuit City*. 532 U.S. at 118. Their position flouts both text and precedent by focusing on the transit of the goods and the business of the employer—rather than the work a class of workers actually performs. It also sweeps so broadly as to preclude arbitration in many sectors of the national economy that are far removed from the maritime shipping and railroad industries Congress designed § 1 to target.

According to these courts, it is enough for the class of workers to play some role in "transporting goods … within the flow of interstate commerce." *Waithaka*, 966 F.3d at 26 (internal quotation marks omitted); *see also Rittmann*, 971 F.3d at 915 (§ 1 applies when workers "carry … goods that remain in the stream of interstate commerce until they are delivered"); Pet.App.19a (§ 1 applies when "the interstate leg of the goods' journey and [the worker's] intrastate delivery of the goods form one continuous interstate journey"). But, again, that transforms § 1's textual focus on "the actual work that the members of the class … typically carry out," *Saxon*, 596 U.S. at 456, into an inquiry into the good's journey that has no basis in § 1's text.

The implications of that approach are staggering. According to the decision below, Brock is exempt from arbitration simply because he transported goods for the final, intrastate leg of their "interstate journe[y]." Pet.App.27a (quotation marks omitted). As the Ninth Circuit has already held, by this reasoning, workers who at all "participat[e] in [an] interstate supply chain" are exempt from arbitration as well. *Randstad*, 95 F.4th at 1163. But if § 1 covers anyone who merely

facilitates interstate transportation in some way, almost any worker could suddenly find himself excluded from arbitration. That rule threatens to sweep in the "shift schedulers" and "those who design Southwest's website" that *Saxon* implied fell outside the exemption. *See* 596 U.S. at 460. It would also reach the retail employees that *Bissonnette* unanimously confirmed it had "never understood § 1" to include. *See* 601 U.S. at 256.

Moreover, the Tenth, Ninth, and First Circuit's approach will engender the sort of protracted threshold litigation the FAA was designed to avoid by requiring courts to delve into the minutiae of supply chains and customer relationships. Indeed, the Tenth Circuit determined that it needed to consider three fact-intensive factors to decide whether Brock was engaged in interstate commerce by virtue of the goods he carried—and the court left open the possibility that in other cases, even more factors might come into play. *See* Pet.App.18a-19a & n.5. The court then sketched out five separate diagrams—none of which paid tribute to § 1's text—to "illustrate" why one factor in particular was "key" to determining whether Brock was engaged in interstate commerce, before diving into a detailed analysis of the relationship between Flowers and Brock, Inc's customers. Pet.App.19a-22a. Section 1 does not require this multi-factorial, diagram-heavy analysis. It does not contemplate a customer-based or industry-based analysis. But unless this Court intervenes, courts in the Tenth, Ninth, and First Circuits will be mired in unnecessarily complex § 1 litigation for years to come.

IV. THIS CASE IS AN IDEAL VEHICLE.

This Court has repeatedly granted certiorari in § 1 cases expressly reserving the local-driver question that has prompted most of the § 1 litigation. This case provides an uncommonly good opportunity for this Court to answer that question and clarify § 1 for once and for all. For purposes of this appeal, there is no dispute about Brock's responsibilities or the class of workers to which he belongs. In particular, the District Court and Court of Appeals both assumed that Brock belongs to a class of workers who *never* cross state lines nor load or unload vehicles that do so. Pet.App.5a, 12a, 39a, 49a. This petition is thus unafflicted by the kinds of fact disputes that might keep the Court from resolving this question in other cases. *See, e.g.*, *Fraga*, 61 F.4th at 236-37 (noting uncertainty regarding how to determine whether a worker performs transportation work sufficiently "frequently" to fall within § 1); *Miller v. Amazon.com, Inc.*, No. 21-36048, 2023 WL 5665771, at *1 (9th Cir. Sept. 1, 2023) (addressing dispute over which aspects of a worker's work were relevant for § 1 inquiry). It is also unafflicted by disputes about *how much* border-crossing is enough or *whether* a product has been fundamentally transformed that complicate other cases. *See, e.g.*, *Mahwikizi v. Uber Tech., Inc.*, No. 22-cv-3680, 2023 WL 2375070, at *3-4 (N.D. Ill. Mar. 6, 2023); *Carmona Mendoza*, 73 F.4th at 1138.

The answer to the question presented is also outcome determinative. Here, there is no alternative path to arbitration left available. *See Ortiz v. Randstad Inhouse Servs., LLC*, Nos. 23-55147 & 23-55149, 2024 WL 1070823, at *4 (9th Cir. Mar. 12, 2024) (remanding for the district court to determine

whether arbitration agreement was enforceable under state law). Absent this Court's intervention, this dispute will be resolved in federal court—notwithstanding the existence of an arbitration agreement that reflects both parties' intent to arbitrate disputes of precisely this sort.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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