No. 25-2712

In the United States Court of Appeals for the Ninth Circuit

JOSE MADRIGAL,
individually, and on behalf of others similarly situated,
Plaintiff – Appellee,

v.

FERGUSON ENTERPRISES, LLC,
a California limited liability company, et al.,
Defendant – Appellant.

On Appeal from the U.S. District Court for the
Central District of California, Case No. 2:24-cv-00733-MRA

BRIEF OF NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. AS *AMICI CURIAE* IN SUPPORT OF APPELLANT FERGUSON ENTERPRISES, LLC

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Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 26.1-1, counsel for *amici curiae* certifies that the National Association of Wholesaler-Distributors is a 501(c)(6) non-profit trade association. It has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock. The Association is not a subsidiary or affiliate of any publicly owned corporation and doesn't issue shares or debt securities to the public.

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Dated: July 16, 2025

Respectfully submitted,

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IDENTITY AND INTEREST OF *AMICI CURIAE*[*]

The National Association of Wholesaler-Distributors is a non-profit trade association that represents the wholesale distribution industry—an essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. The Association is made up of direct-member companies and a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than $8 trillion in annual sales volume providing stable and well-paying jobs to more than 6 million workers.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000

[*] The parties have consented to the filing of this *amici* brief. This brief was not authored in whole or in part by counsel for any party. No party, party's counsel, entity, or person—other than *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. 29(a)(4)(E).

direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Federation of Independent Business Small Business Legal Center, Inc. is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc., which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

INTRODUCTION

In the Federal Arbitration Act, Congress mandated the enforcement of arbitration agreements on the same terms as any other contract—while making a narrow exception for transportation "workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Mindful that the exception must not swallow the rule, the Supreme Court has instructed that the exemption must "be afforded a narrow construction" and a "precise reading." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118–19 (2001). The decision below violates this instruction and, if permitted to stand, would not only conflict with the precedent of the Supreme Court and this Court but also impose needless real-world costs on businesses, workers, and consumers.

Like many workers for *amici*'s members across the country, Jose Madrigal agreed to arbitrate with his employer, Ferguson Enterprises. At his job, Madrigal made wholly intrastate deliveries of goods—mostly plumbing products—that already had been shipped into California. The goods had come to rest at a California warehouse until and unless a customer placed an order for them. That often took several months—and sometimes never happened at all.

Yet the district court denied Ferguson's motion to compel arbitration of Madrigal's wage-and-hour claims, holding that Madrigal was exempt from the Act as a worker "engaged in foreign or interstate commerce" under 9 U.S.C. § 1. ER-12. That was reversible error. In expanding the transportation worker exemption to cover local delivery drivers whose only connection to interstate commerce is delivering goods previously shipped into the state, the decision below violates Supreme Court precedent requiring a narrow construction of the exemption—and as Ferguson's brief explains (at 22–36), it runs afoul of this Court's precedent, too.

Correcting this decision and clarifying the law in this important area is especially important for *amici*'s members who are distributors. Distribution centers can (and often do) hold goods for significant periods of time. So it's simply incorrect to assume (as the district court did below) that the so-called "last mile" driven *intra*state to deliver goods is somehow still part of the continuous flow of goods where the Act's *inter*state commerce requirement is concerned.

This Court should reverse the decision below and provide much-needed clarity by confirming that workers making in-state deliveries of

goods that came to rest before being delivered locally aren't exempt from the Act. Any worker who makes purely in-state deliveries from an in-state warehouse to in-state customers—and doesn't load or unload goods from carriers that transported them across state lines—isn't an exempt transportation worker under the Act.

Any other conclusion would impermissibly expand the exemption—which must be narrowly construed—to be virtually limitless. In derogation of Supreme Court precedent, such a construction would cover the intrastate transport of all goods that have ever crossed state lines—even if those goods already had come to rest in an in-state warehouse or distribution center before being delivered in-state. And it needlessly would impose serious costs by depriving hundreds of thousands of businesses and the drivers who work for them of the considerable "real benefits" of "enforcement of arbitration provisions." *Circuit City*, 532 U.S. at 122–23.

BACKGROUND

I. Distributors often need to hold goods in warehouses before they're delivered within the same state.

Distributors like Ferguson are essential to the American supply chain that moves trillions of dollars' worth of goods. In 2023, the U.S.

transportation system moved over 20 billion tons of goods worth $18.7 trillion. U.S. DOT, Bureau of Transp. Stat., *Freight Facts and Figures* (2024).[1] More than half of those goods (by value) were shipped between states. *See* U.S. DOT, Bureau of Transp. Stat., *The Geography of U.S. Freight Shipments* 36 (2011).[2] Distributors then delivered many of those goods to retailers and consumers *within* those destination states.

Distribution inherently includes the storage of goods. Much of the overall supply of goods—commonly months' worth of inventory—resides in the supply chain. Hau L. Lee et al., *The Bullwhip Effect in Supply Chains*, 38 Sloan Mgmt. Rev. No. 3 at 93–94 (1997). Distribution of a particular good might require a factory warehouse, a distributor central warehouse, a distributor regional warehouse, a retailer's storage space, and other resting points. *Id.* at 94. Each of those points often maintains significant inventory. *Id.*

So distributors frequently hold goods before they're transported to local customers and, ultimately, consumers. One reason for this is the

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[1] *Available at* https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/.

[2] *Available at* https://www.bts.gov/archive/publications/freight_in_america/geography_of_us_freight_shipments.

variable nature of demand. Even in a market where "consumer sales do not seem to vary much," there can be "pronounced variability in the retailers' orders to the wholesalers." *The Bullwhip Effect* at 94. So it's common for distributors like Ferguson to maintain inventory that hasn't been ordered by a specific customer.

As a result, out-of-state goods that arrive in a state for further distribution to retailers or consumers don't flow continuously. In addition to more routine variability in demand, distributors also "cope with unexpected or unusual demands for products." James A. Narus & James C. Anderson, *Rethinking Distribution: Adaptive Channels*, Harv. Bus. Rev., July–Aug. 1996, at 113. For example, a particular spare part may be rarely needed only in emergencies, but it still must be stocked somewhere. *Id.* at 114.

II. The district court denied Ferguson's motion to compel arbitration, holding that Madrigal was exempt from the Federal Arbitration Act.

Distributors perform critical functions for the American economy. To do so, they hire drivers like Madrigal. And to structure their contractual relationships with those workers, distributors commonly rely on arbitration agreements.

The district court, however, denied Ferguson's motion to compel arbitration of Madrigal's wage-and-hour claims, holding that he was exempt from the Act as a worker "engaged in foreign or interstate commerce" under 9 U.S.C. § 1. ER-11–12. The district court believed this result was required by this Court's decisions in *Rittmann v. Amazon.com, Inc.*, 971 F.3d 904 (9th Cir. 2020), and *Carmona v. Domino's Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023).

But both *Rittmann* and *Carmona* involved goods shipped interstate that paused only briefly at in-state distribution centers before being delivered to in-state recipients for whom they were "inevitably destined" at the outset. Here, by contrast, Madrigal delivered goods that sat as general inventory in a warehouse for an indeterminate period of time, with no indication of when—or even if—they would go from there.

ARGUMENT

I. The district court reversibly erred in expanding the transportation worker exemption to apply in this case.

The district court's decision should be reversed because it improperly expands the transportation worker exemption and in so doing misapplies the precedent of the Supreme Court and this Court.

A. The Supreme Court has long held that the exemption must be construed narrowly.

Congress enacted the Act in 1925 "in response to judicial hostility to arbitration." *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 649 (2022). Section 2 is the "primary substantive provision" of the Act. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). It provides that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Section 2 embodies a "national policy favoring arbitration." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). As a result, "the Supreme Court has interpreted its scope broadly," *Chamber of Com. v. Bonta*, 62 F.4th 473, 478 (9th Cir. 2023), and ordered that it be given an "expansive reading." *Circuit City*, 532 U.S. at 113.

Section 1 of the Act creates a limited exemption to § 2. Section 1 exempts from the Act "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Supreme Court has made clear that this transportation worker exemption, when considered in light of the Act's

"statutory context" and "purpose," must "be afforded a narrow construction" and a "precise reading." *Circuit City*, 532 U.S. at 118–19.

In defining the exemption's bounds, the Supreme Court also has instructed that "any exempt worker must at least play a *direct and necessary role* in the free flow of goods *across borders*" and the exception cannot be interpreted in "limitless terms." *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024) (emphases added and quotation marks omitted).

The Court has emphasized this narrowing principle even when holding that the exemption applied. In *Southwest Airlines Co. v. Saxon*, for example, the Court held that airport workers "who load[ed] cargo on a plane bound for interstate transit" were exempt under the Act because they "play[ed] a *direct and necessary role* in the free flow of goods *across borders*." 596 U.S. 450, 458 (2022) (emphases added and quotation marks omitted).

This Court, too, recently explained that "to qualify as a transportation worker, an employee's relationship to the movement of goods must be sufficiently close enough to conclude that his work plays a tangible and meaningful role in their progress *through the channels of*

interstate commerce." *Ortiz v. Randstad Inhouse Servs., LLC*, 95 F.4th 1152, 1160 (9th Cir. 2024) (emphasis added). The decision below cannot be reconciled with these precedents.

B. The district court's decision impermissibly expands the exemption.

Instead of construing the transportation worker exemption narrowly, as Supreme Court precedent requires, the decision below radically expands it. Madrigal's work here bears no "relationship" to "the movement of goods . . . through the channels of interstate commerce," let alone the "close" relationship required for that work to fall within the transportation worker exemption. *See Ortiz*, 95 F.4th at 1160.

Nor is Madrigal's wholly local work anything like that performed by the airport cargo loaders in *Saxon*, in which the Court held that "one who loads cargo on a plane bound for interstate transit is intimately involved with the commerce (*e.g.*, transportation) of that cargo." 596 U.S. at 458.

Instead, Madrigal delivered goods from Ferguson's California warehouse to Ferguson's California customers. ER-53–54. After being shipped interstate, the goods came to rest indefinitely as general inventory at the warehouse, until and unless a customer placed an order

for their delivery, which often took "weeks or months," and sometimes never occurred "at all." ER-52.

So the only connection that Madrigal's work has to the flow of goods across state borders is that the goods he delivered had at one point been shipped interstate. That can't be—and has never been—a sufficient basis for applying the transportation worker exemption. *See Immediato v. Postmates, Inc.*, 54 F.4th 67, 80 (1st Cir. 2022) ("the fact that . . . goods have moved across state borders is not alone sufficient to bring . . . workers within the purview" of the transportation worker exemption).

As then-Judge Barrett explained in rejecting an argument that parties were covered by the transportation worker exemption simply because "they carr[ied] goods that have moved across state . . . lines," the exemption is "about what the worker does," not "about where the goods have been." *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798, 802 (7th Cir. 2020); *see also Hamrick v. Partsfleet, LLC*, 1 F.4th 1337, 1346, 1349 (11th Cir. 2021) (rejecting argument that workers who are not "actually engaged in foreign or interstate commercial transportation" are "still exempt from arbitration so long as the goods and materials [they] deliver[ed]" had "been previously transported interstate").

But that is precisely the test the district court applied. ER-11–12. Given the interconnectedness of modern supply chains, most goods travel across state or national boundaries at some point. The U.S. transportation system moved over 20 billion tons of goods worth $18.7 trillion in 2023 alone. *See Freight Facts and Figures*. More than half of that by value—trillions of dollars' worth—is shipped interstate. *See The Geography of U.S. Freight Shipments* 36. And a significant percentage of those goods are held as inventory in distribution centers until (or unless) they're ordered by local customers. *See The Bullwhip Effect* at 94. But under the district court's decision, if the goods *ever* moved interstate, then *every* worker who transports them locally is exempt from the Act. That is not the law.

If the district court's decision is permitted to stand, the exemption would swallow the vast majority of the Act's rules protecting arbitration agreements for workers in the Ninth Circuit. This Court should reject such an unprecedented expansion of the exemption, which would violate the Supreme Court's repeated directives to afford it a "narrow construction" and a "precise reading," *Circuit City*, 532 U.S. at 118–19,

and avoid defining the class of exempt workers in "limitless terms." *Bissonnette*, 601 U.S. at 256.

C. The district court misapplied this Court's precedent.

In staking out its untenable position, the district court relied almost entirely on this Court's decisions in *Rittmann* and *Carmona*, concluding that they "directly addressed" the issue presented by this case. ER-11. Respectfully, that is not so.

In *Rittmann*, this Court held that drivers who made so-called "last mile" intrastate deliveries of packages shipped interstate were still engaged in interstate commerce for purposes of § 1. 971 F.3d at 907, 916. The drivers delivered packages from warehouses to their final destinations, which were fixed in advance by consumers' orders by the time the packages crossed state lines. *See id.* at 907.

This Court explained that the "packages d[id] not 'come to rest'" at the warehouses because they were "not held at warehouses for later sales to local retailers." *Id.* at 916. Instead, the packages were "simply part of a process by which a delivery provider transfer[red] the packages to a different vehicle for the last mile of the packages' interstate journeys."

Id. So they "remain[ed] in the stream of interstate commerce until they [we]re delivered." *Id.* at 915.

That isn't the case here. Unlike the drivers in *Rittmann*, who delivered packages that already had been ordered by consumers and so had fixed destinations when they stopped at the warehouse, 971 F.3d at 907, Madrigal here delivered goods that already had come to rest at Ferguson's California warehouse—subject to no prior order and with their ultimate destinations unknown—where they sat for an average of around 60 days. ER-53. Indeed, *Rittmann* explicitly rested its conclusion that the goods hadn't "come to rest" on the fact that they were "not held at warehouses for later sales to local retailers." *Id.* at 916. Here, by contrast, that's exactly how the goods were held.

Carmona doesn't support (much less require) applying the exemption, either. That case involved ingredients for Domino's pizza, which Domino's bought from out-of-state suppliers for delivery to its California warehouse. 73 F.4th at 1136. The plaintiff drivers then delivered the ingredients in response to orders from local Domino's franchisees, which weren't placed "until after [the ingredients] arrive[d] at the warehouse." *Id.* at 1138.

Rejecting Domino's attempt to distinguish *Rittmann* on that ground, this Court instead concluded that the plaintiff drivers qualified for the transportation worker exemption because they "operate[d] in a single, unbroken stream of interstate commerce." 73 F.4th at 1138. The Court reasoned that the pizza ingredients "were *inevitably destined* from the outset of the interstate journey for Domino's franchisees," notwithstanding their "brief[] pause[]" at the warehouse along the way. *Id.* (emphasis added).

So the dispositive fact in *Carmona* was that goods delivered locally by the plaintiff drivers were "inevitably destined" for a known, fixed group of customers (Domino's franchisees)—even if a specific customer hadn't yet placed an order for the ingredients by the time they crossed state lines. It was this fact that led *Carmona* to analogize to one of the seminal "come to rest" cases—*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568–70 (1943). *See* 73 F.4th at 1138.

In *Walling*, the Supreme Court held that paper products shipped interstate to Florida and then delivered to in-state customers had not come to rest at the local warehouse but remained in interstate commerce. 317 U.S. at 568. The Court in *Walling* relied on the fact that the paper

company, "before placing [its] orders for stock items," had a "fair idea when and to whom the merchandise w[ould] be sold," and so was "able to estimate with considerable precision the immediate needs of [its] customers even where they d[id] not have contracts calling for future deliveries." *Id.* at 566.

But that critical fact isn't present in this case. Unlike the paper company in *Walling*, Ferguson had no "idea when and to whom the merchandise w[ould] be sold," nor could it estimate their destination with *any* (let alone "considerable") precision based on the needs of specific customers. 317 U.S. at 566, 568. Unlike the pizza ingredients in *Carmona*, the Ferguson plumbing products that Madrigal delivered locally weren't "inevitably destined" for any fixed group of customers "from the outset of the[ir] interstate journey." 73 F.4th at 1138. To the contrary, "[a]t the time Ferguson order[ed] the product for shipment to the [California warehouse] from third-party suppliers, Ferguson d[id] not know when or where in the local area such general inventory items w[ould] be delivered (if at all)." ER-52.

Nor did the goods delivered by Madrigal only "briefly pause[]" at the warehouse. *Carmona*, 73 F.4th at 1138; *see also Walling*, 317 U.S. at

569. Instead, they were "held" as "general inventory" for "weeks or months," and "sometimes . . . never purchased at all." ER-52. If drivers who deliver goods under these circumstances are considered part of a "single, unbroken stream of interstate commerce," *Carmona*, 73 F.4th at 1138, then that stream isn't unbroken, but unbreakable.

That can't be—and isn't—the law. *See Immediato*, 54 F.4th at 79 ("[t]o be 'engaged in interstate commerce'" must "exclude[] intrastate transactions that bear only a 'casual' or 'incidental' relationship to the interstate movement of goods or people") (quoting *United States v. Yellow Cab Co.*, 332 U.S. 218, 231 (1947)). So at minimum, this Court should confirm that to qualify for the exemption, a worker who makes purely intrastate deliveries must establish that the goods the worker delivered hadn't come to rest by showing *both* that: (1) the goods did no more than "briefly pause[]" at an in-state warehouse; *and* (2) they were "inevitably destined" for a known, fixed group of customers. *See Carmona*, 73 F.4th at 1138.

To the extent *Rittmann* and *Carmona* are to the contrary, *amici* respectfully submit that they were wrongly decided, conflict with binding Supreme Court precedent, and exacerbate a recognized, entrenched split

between this Court and other circuits. *See*, *e.g.*, *Saxon*, 596 U.S. at 457 n.2 (acknowledging split between this Court and the Seventh Circuit); *Carmona*, 73 F.4th at 1137 n.1 (recognizing that "the Fifth Circuit disagrees with" *Rittmann*) (citing *Lopez v. Cintas Corp.*, 47 F.4th 428, 432–34 (5th Cir. 2022)). In all events, the district court's decision cannot be permitted to stand.

II. This Court should clarify that the Act applies when workers make in-state deliveries of goods that have already come to rest at in-state warehouses.

Particularly given the vital role distributors play in the supply chain, this case presents the Court with an opportunity to provide much-needed clarity in this important area of the law by confirming that workers who transport goods that travel interstate and then come to rest before being delivered locally aren't exempt from the Act. That approach would not only ensure conformance with Supreme Court precedent, but also harmonize the interstate commerce analysis in both the Fair Labor Standards Act and the Arbitration Act. *See, e.g.*, *Walling*, 317 U.S. at 565–66; *Watkins v. Ameripride Servs.*, 375 F.3d 821, 826 (9th Cir. 2004); *Donovan v. Scoles*, 652 F.2d 16, 18 (9th Cir. 1981). That makes particularly good sense given that this Court elsewhere has relied on

cases addressing the Fair Labor Standards Act in interpreting the Arbitration Act. *Lopez v. Aircraft Serv. Int'l, Inc.*, 107 F.4th 1096, 1102 (9th Cir. 2024).

This Court can—and should—explicitly join other circuits that have applied the "come to rest" framework in assessing whether employees are exempt transportation workers under the Arbitration Act. *See Immediato*, 54 F.4th at 79 (drivers who deliver "goods [that have] come to rest at local restaurants and convenience stores" aren't exempt transportation workers). Explicitly adopting the "come to rest" framework would also bring this Court's case law into closer alignment with the Supreme Court's directives and provide much-needed guideposts to district courts seeking to apply the exemption consistently and in line with the Supreme Court's instructions to construe the transportation worker exemption "narrow[ly]" and "precise[ly]," *Circuit City*, 532 U.S. at 118–19, and not define the class of exempt workers in "limitless terms." *Bissonnette*, 601 U.S. at 256.

So the key inquiry is where to draw the line between workers locally transporting goods traveling in a "continuous stream of commerce," *Carmona*, 73 F.4th at 1137, and those who locally transport *all* "goods

[that] have moved across state borders," which, under a proper narrow construction, isn't a "sufficient" basis for the exemption to apply. *Immediato*, 54 F.4th at 80. Applied in the transportation worker context, the "come to rest" framework will help courts accurately and consistently determine "when the interstate transport of goods ends and the purely intrastate transport of the same goods begins." *Ortiz*, 95 F.4th at 1161. That, in turn, will helpfully guide the determination of whether workers making in-state deliveries of those goods are exempt transportation workers.

Under that framework, "goods that originally moved in interstate commerce, but that came to rest within the state prior to intrastate handling and sale, los[e] their interstate character and employees involved in the intrastate distribution of such goods [are] not engaged in commerce." *Donovan*, 652 F.2d at 18. *Amici* agree with Ferguson (at 22–36) that at minimum, the district court's decision cannot stand even under this Court's decisions in *Rittmann* and *Carmona*.

But respectfully, *amici* further submit that to the extent *Rittmann* and *Carmona* were wrongly decided, this case is an ideal vehicle for adopting an approach that is more consistent with statutory text and

Supreme Court precedent—*i.e.*, that workers who make in-state deliveries from an in-state supply center to in-state customers, and don't load or unload goods from carriers that transported them across state lines, aren't exempt transportation workers under § 1. *See Immediato*, 54 F.4th at 80 (First Circuit); *Lopez*, 47 F.4th at 432–34 (Fifth Circuit); *Wallace*, 970 F.3d at 802 (Seventh Circuit); *Hamrick*, 1 F.4th at 1346, 1349 (Eleventh Circuit).

III. If permitted to stand, the unbounded interpretation adopted below would impose serious real-world costs.

Expanding the transportation worker exemption to include the intrastate transport of all goods that cross state lines—even if they've come to rest indefinitely before local delivery—would conflict with the precedent of the Supreme Court and this Court. It also would impose serious costs by depriving hundreds of thousands of businesses and the drivers they employ of the considerable "real benefits" of "enforcement of arbitration provisions." *Circuit City*, 532 U.S. at 122–23.

Arbitration allows employers and employees to resolve disputes promptly and efficiently while avoiding the costs and delays associated with traditional litigation. It offers "lower costs, greater efficiency and

speed, and the ability to choose expert adjudicators to resolve specialized disputes." *Concepcion*, 563 U.S. at 348.

By contrast, the impermissibly expansive, effectively limitless approach adopted by the district court below will lead only to more drawn-out and costly litigation—running directly counter to the Supreme Court's admonition that the exemption shouldn't be interpreted to introduce "considerable complexity and uncertainty" and "undermin[e] the [Act]'s proarbitration purposes," *Circuit City*, 532 U.S. at 123, and "breed[] litigation from a statute that seeks to avoid it." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 275 (1995).

These increased litigation costs will be borne by businesses, workers, and ultimately customers. Litigation is more time-consuming and expensive than arbitration for both businesses and workers alike. The uncertainty arising from an impermissibly broad construction of the transportation worker exemption will inevitably lead to more disputes over the enforceability of arbitration agreements with workers.

Businesses like *amici's* members, faced with sharply increasing litigation costs, would have no choice but to pass on those costs to workers (including in the form of reduced pay or benefits) and ultimately

consumers who purchase trillions of dollars in goods each year. Some smaller businesses might even go out of business altogether—depriving the economy of much-needed jobs—because they can't shoulder the increased costs and still stay afloat. This Court should avoid these untoward results, reverse the decision below, and provide much-needed clarity in this important area of the law.[3]

CONCLUSION

The Court should reverse the district court's order denying Ferguson's motion to compel arbitration.

[3] To the extent the panel views *Rittmann* and *Carmona* as requiring affirmance, *amici* respectfully suggest that further review *en banc* or in the Supreme Court would be warranted. *Supra* at 21–22.

Dated: July 16, 2025

Respectfully submitted,

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- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
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- ○ complies with the length limit designated by court order dated _____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature /s/ Allyson N. Ho **Date** July 16, 2025
*(use "*s/[typed name]*" to sign electronically-filed documents)*