No. 19-1848

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BERNARD WAITHAKA,
Plaintiff-Appellee,

v.

AMAZON.COM, INC.; AMAZON LOGISTICS, INC.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
(No. 4:18-cv-40150)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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November 20, 2019

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INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It appears often as *amicus curiae* in important Federal Arbitration Act cases, see, e.g., *Epic Systems Corp. v. Lewis*, 136 S. Ct. 1612 (2018); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015); and it has published many articles on arbitration by outside experts, see, e.g., Victor E. Schwartz & Christopher E. Appel, *Setting the Record Straight About the Benefits of Pre-Dispute Arbitration*, WLF Legal Backgrounder, www.bit.ly/2Z6rKqg (June 7, 2019).

The FAA "establishes a federal policy favoring arbitration." *Shearson/Am. Exp. Inc. v. McMahon*, 482 U.S. 220, 226 (1987). It requires, in §2, that most people comply with their arbitration agreements. It contains a discrete exception, in §1, for a few groups of transportation workers. The exception is meant not to excuse these workers from arbitration, but merely to enable them to arbitrate

[*] No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission. All parties have consented to the brief's being filed.

through other congressionally created channels. The plaintiff here is not subject to an alternative channel of this sort; he just wants to get out of arbitration altogether. He seeks to gut the federal policy in favor of arbitration by expanding the §1 exception far beyond its proper bounds.

The district court rewarded the plaintiff's efforts. It erred. WLF urges this Court to set things right.

STATEMENT OF THE CASE

Sometimes called "the everything store," Amazon sells a vast array of goods through its website, www.amazon.com. It crowdsources delivery of some of these goods through its Amazon Flex smartphone app. Using this app, an independent contractor can agree to pick up and deliver items locally for Amazon. The independent contractor uses her own mode of transportation, sets her own schedule, and decides which packages to deliver. Each person who partakes in Amazon Flex e-signs an Independent Contractor Terms of Service that contains an arbitration clause.

Waithaka made local deliveries through Amazon Flex. He sued Amazon under Massachusetts's wage and independent-contractor laws. Amazon moved to compel arbitration, arguing that Waithaka must

honor the arbitration clause in the Independent Contractor Terms of Service.

Amazon invoked §2 of the Federal Arbitration Act, which says that an otherwise valid arbitration clause in a "contract evidencing a transaction involving commerce" is "enforceable." 9 U.S.C. § 2. In response Waithaka pointed to §1, known as the "transportation-worker exemption." It says that the FAA does not govern "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." *Id.* at § 1. Waithaka argued that he falls within the §1 exception.

The trial court accepted Waithaka's argument and denied the motion to compel arbitration. Amazon had moved, in the alternative, to transfer the action to Washington state. The trial court granted that motion to transfer. The court in Washington stayed the action pending the outcome of this appeal.

SUMMARY OF ARGUMENT

Why did Congress pass the Federal Arbitration Act? It's no mystery. Courts had long refused to enforce most arbitration agreements, and this meant that more disputes remained in litigation.

Litigation is expensive. It is expensive for businesses, which must pay lawyers to argue and employees to testify. It is expensive for consumers and workers, who cover businesses' costs through higher prices and lower wages. "It goes without saying," as one witness told the House and Senate Judiciary Committees, that it is "unprofitable to the State," which must pay for "judges, attendants, light, heat, and power—and even ventilation in some courthouses." Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees on the Judiciary, 68th Cong., 1st Sess. (1924) (statement of Charles L. Bernheimer). And it is expensive to the average citizen; for just as corporate litigation expenses are really consumer and worker expenses, state litigation expenses are really taxpayer expenses. To save people time, money, and trouble, Congress empowered them to enforce otherwise valid clauses, in contracts "involving commerce," that require streamlined private dispute resolution—in a word, arbitration. 9 U.S.C. § 2.

But the FAA contains a qualification. It does not govern "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Why

did Congress create this exception? Figuring that out requires a little more concentration. But in the end, the answer is clear.

As we will show, §1 is not the product of a legislative intent to excuse a few transportation workers—and, for some peculiar reason, them alone—from honoring arbitration agreements. On the contrary, §1 exists because Congress expected these workers to engage in arbitration governed by *other* federal laws. When the FAA was passed, seamen and railroad workers were subject to their own federal arbitration regimes. Congress exempted these workers from the FAA to ensure that the FAA did not disrupt those distinct systems of alternative dispute resolution. (The seamen had, in addition, lobbied for special treatment.)

As for §1's residual clause—the carveout for "other class[es] of workers engaged in foreign or interstate commerce"—it covers only workers whom Congress expected would get their own federal arbitration law. This means workers *precisely analogous* to seamen and railroad employees. It means workers who (1) traverse national and international shipping lanes and (2) might cause major economic disruption through labor action. It means, in short, workers who regularly carry goods, in bulk, across interstate or foreign borders.

Section 1 simply makes space for existing or expected federal arbitration laws tailored to specific transportation workers. And because §1 fulfills this one focused purpose, there is no principled way to stretch its application. Although some judge-made tests purport to expand the exception beyond national and international transportation of goods, these contrived standards defy statutory text and context, produce inconsistent results, and serve no end set forth by Congress.

ARGUMENT

I. THE TEXT AND CONTEXT OF FAA §1 ESTABLISH THAT IT COVERS ONLY WORKERS WHO TRANSPORT GOODS IN BULK ACROSS BORDERS.

Section 2 of the FAA empowers a party to enforce an (otherwise valid) arbitration clause in "a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. What did Congress mean by this? It wanted to pass a statute capable of thwarting the "great variety" of "devices and formulas" that judges "hostil[e] towards arbitration" had used to "declar[e] arbitration against public policy." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 342 (2011). And it used broad terms ("evidencing" a transaction "involving" commerce), so it obviously wanted the FAA to extend as far as the federal legislative power under

the Commerce Clause can go. *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 277 (1995). In brief, it wanted the FAA to govern most arbitration clauses.

Most, but not *all*. Section 1 of the FAA withdraws from the statute's coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. What did Congress mean by *that*?

Note first that §2 is framed much more broadly than §1. The one extends the FAA to a contract "involving" commerce, while the other removes it from a contract signed by certain workers "engaged in" commerce. The "open-ended" §2 is limited by the "narrower" §1. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001). This suggests an intent to withdraw only a small sliver of contracts from the FAA's purview. After all, if Congress had wanted the FAA to have a narrow ambit—if it had wanted it to apply, say, only to contracts between merchants—it could have simply said so in the first place. It would have made no sense for Congress to craft a narrow statute by the circuitous method of (1) writing a sweeping clause, and then (2) cutting that clause to the bone with another, *almost* equally sweeping clause.

Moreover, §1 lists *seamen*, *railroad employees*, and *others* "engaged in" foreign or interstate commerce. The section's more general category ("any other class of workers engaged in foreign or interstate commerce") is "controlled and defined" by the examples that precede it ("seamen" and "railroad employees"). *Circuit City*, 532 U.S. at 114-15. So §1 governs seamen, railroad employees, and *others like them*. Others, that is, who engage, as seaman and railroad employees do, in bulk foreign or interstate shipping. Section 1 is a carveout for a small subset of transportation workers.

And *that*, at first glance, seems somewhat incongruous. *Why* would Congress want to protect commercial arbitration to the fullest extent possible, *except* when it comes to nationwide transportation, the very lifeblood of commerce?

The answer is revealed by a closer look at Congress's decision to mention rails and sails. Why were railroad employees and seamen singled out? Special reasons applied to each group—reasons that point to §1's exceedingly limited role in Congress's arbitration scheme.

Start with the railroads. "Before the modern highway system, railroads were the only practical means of long distance

transportation." Dennis R. Nolan & Roger I. Abrams, *American Labor Arbitration: The Early Years*, 35 U. Fla. L. Rev. 337, 382 (1983). And "railroad employees were among the first to organize nationally." *Id.* The railroads were, therefore, both a keystone of the economy and a hotbed of labor friction. Not surprisingly, the national government spotted the need for streamlined dispute resolution for the rail industry long before it spotted the need for it in the wider market. "Reacting to a drastic increase in [railroad worker] strikes, President Grover Cleveland recommended to Congress in 1886 the creation of a permanent board for voluntary arbitration of railroad labor disputes." *Id.* at 382.

The resulting law—and a series of others—failed to stem the strikes. *Id.* at 382-85. But Congress kept trying. For decades—up to and through 1925, the year the FAA was passed—Congress collaborated with the railroads and their workers to create a special rail-industry arbitration regime. Around the very time Congress was considering the FAA, in fact, "railway executives and union officials" were holding "a series of conferences aimed at drafting a new law." *Id.* at 386. This resulted in the Railway Labor Act of 1926—a law that stuck. It created

a comprehensive process for resolving railroad labor grievances. *Id.* at 386-87. The law even banned strikes "over certain grievance disputes." *Id.* at 387. It would, of course, have made no sense for Congress to disrupt the delicate negotiations leading to this law by slapping the FAA on the railroads.

The reason seamen are mentioned in §1 is more obvious still. From the beginning, the federal government had taken a close interest in maritime working conditions. For instance, the First Congress "enacted protective legislation giving seamen the right to written employment contracts . . . [and] protection from onboard debt collection.'" Ahmed A. White, *Mutiny, Shipboard Strikes, and the Supreme Court's Subversion of New Deal Labor Law*, 25 Berkeley J. Emp. & Lab. L. 275, 292 (2004) (discussing Act of July 20, 1790, 1 Stat. 131, 131-35); see also *Southern S.S. Co. v. NLRB*, 316 U.S. 31, 38-39 (1942) ("Workers at sea have been the beneficiaries of extraordinary legislative solicitude[.] . . . The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages, and return transportation to this country if destitute abroad.").

The First Congress also regulated the earliest form of maritime alternative dispute resolution—better known as mutiny—through its power "to define and punish . . . Felonies committed on the high Seas." Const. art. I § 8, cl. 10. "If any seaman shall . . . make a revolt in the ship," declared the Crimes Act of 1790, he "shall be deemed . . . a pirate and a felon, and . . . shall suffer death." 1 Stat. 112, 114. Notwithstanding this and other punitive laws, "labor protest" was "a common feature of shipboard life in the nineteenth and early twentieth centuries." White, supra, 25 Berkeley J. Emp. & Lab. L. at 299-301. By 1925, therefore, seamen (like railroad workers) were both highly organized and the subject of several federal labor laws. See *id.* at 305. As far back as 1872, in fact, Congress had provided seamen a distinct form of arbitration, overseen by "shipping commissioners," in many ports. See Shipping Commissioners Act of 1872, 17 Stat. 262, 267 (Sec. 25).

What's more, the president of the International Seamen's Union lobbied to exempt seamen from the FAA. Matthew W. Finkin, *Workers' Contracts under the United States Arbitration Act: An Essay in Historical Clarification*, 17 Berkeley J. Emp. & Lab. L. 282, 284-85

(1996). He feared that, because of then-existing quirks of admiralty law, seamen were especially vulnerable to hidden arbitration clauses. *Id.* at 286. He feared too that, unlike other workers, seamen (and railway laborers) were subject, if they ignored such a clause, to being "forcibly returned to work." *Id.* at 287. And he thought that courts, which had historically viewed seamen as "wards of the admiralty," treated his constituents with special favor. *Id.* at 287-88. The seamen's exemption from the FAA has all the marks of a legislative compromise extracted by an interest group—and limited to that group's unique circumstances.

It is true that in a letter to Congress supporting passage of the FAA, Herbert Hoover, then the Secretary of Commerce, wrote: "If objection appears to the inclusion of workers' contracts in the law's scheme, it might be well amended by stating 'but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in interstate or foreign commerce.'" Joint Hearings on S. 1005 and H. R. 646, supra. But the context discussed above shows that Hoover, in referring to "workers' contracts," was likely just responding to the special needs of a few

discrete transportation industries (and the special pleading of the seamen in particular).

So the keys to understanding §1 are (a) the unique situation of (and lobbying by) seamen and (b) "the existence of administrative rather than judicial machinery for settlement of labor disputes" involving seamen and railroad workers. *Amalgamated Ass'n St. Elec. Ry. & Motor Coach Emp. of Am. v. Penn. Greyhound Lines, Inc.*, 192 F.2d 310, 313 (3d Cir. 1951). Congress understood, above all, that including sea and rail workers in the FAA "would have created pointless friction" and "wasteful duplication" in "already sensitive area[s]." *Id.* Once these driving forces are accounted for, the scope of §1 becomes clear. It was meant to apply, at most, to workers in cross-border bulk shipping industries subject, or likely to become subject (hence the "other class of workers" residual clause), to their own unique federal arbitration laws.

This, indeed, is roughly how most federal courts came to understand §1. Section 1 applies, in these courts' view, "to workers engaged in the physical movement of goods in interstate or foreign commerce." *Pryner v. Tractor Supply Co.*, 109 F.3d 354, 357 (7th Cir.

1997) (discussing *Pietro Scalzitti Co. v. Int'l Un. of Operating Eng'rs*, 351 F.2d 576, 580 (7th Cir. 1965)); see also, e.g., *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1470-72 (D.C. Cir. 1997) (collecting cases); *Asplundh Tree Expert Co. v. Bates*, 71 F.3d 592, 598-601 (6th Cir. 1995) (collecting yet other cases). Given the context discussed above—context discussed also by the seminal authority on this topic, *Tenney Engineering, Inc. v. United Electrical Radio & Machine Workers*, 207 F.2d 450, 452-53 (3d Cir. 1953)—it's clear that "workers engaged in the physical movement of goods" does not mean workers "engaged" in such "movement" in some technical or chain-of-causation sense. It means, rather, workers "engaged directly" (*id.* at 452) in such movement—workers whose primary role is literally to carry goods, in bulk, across state lines or foreign boundaries. See, e.g., *Asplundh*, 71 F.3d at 600-01 (holding that §1 governs "seamen, railroad workers, and any other class of workers *actually* engaged in the *movement of goods* in interstate commerce in *the same way* that seamen and railroad workers are") (emphasis added). At most §1 might stretch, some of these courts conclude, to "work so closely related" to such shipping "as to be in

practical effect part of it," 207 F.2d at 452—a problematic if quite narrow exception we address below.

A "narrow construction" of "the § 1 exclusion" prevailed before the Supreme Court, too, in *Circuit City*, 532 U.S. at 119. The high court noted the distinction between §2's use of the broad "involving commerce" and §1's use of the narrower "engaged in commerce," *id.* at 118; and it stressed the importance of reading "other class of workers" in line with "seamen" and "railroad employees," *id.* at 114-15. It also endorsed the view that Congress's decision "to exempt [from the FAA] the workers over whom the commerce power [i]s most apparent" arose from the special status of those workers' industries. *Id.* at 120. "It is reasonable to assume," *Circuit City* says, "that Congress excluded 'seamen' and 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." *Id.* at 121. The "other class of workers" clause, under this reading, covers only those "transportation workers" who, being themselves engaged in the "free flow of goods" across borders, might, like seamen and railroad employees, get a federal arbitration law of their own. *Id.*

The question in *Circuit City* was whether "all employment contracts are excluded from the FAA" through §1. *Id.* at 110-11. In answering "no," the Supreme Court needed merely to declare that §1 "exempts from the FAA only contracts of employment of transportation workers." *Id.* at 119. The Court didn't need to take the next step and clarify *which* transportation workers. But the import of *Circuit City*'s statutory analysis is unmistakable: §1 should apply only to those workers who transport goods in bulk across national or international borders, as seamen and railroad employees do. Those are the only kinds of workers who might generate the kind of labor issues that would spur Congress to pass "specific [arbitration] legislation" (*id.* at 121), as it did for the seamen and the railroad employees.

Hill v. Rent-A-Center, Inc., 398 F.3d 1286 (11th Cir. 2005), reads *Circuit City* accurately. Hill was an account manager for a furniture rental company. *Id.* at 1288. As part of his job, he sometimes delivered "goods to customers out of state in his employer's truck." *Id.* He argued that §1 exempted him from arbitration with his employer. After discussing *Circuit City*, however, *Hill* holds that §1 does not address workers who "incidentally transported goods interstate as part of their

job in an industry that would otherwise be unregulated"—an industry, that is, for which Congress would not create "specific legislation." *Id.* at 1289. "There is no indication," *Hill* continues, "that Congress would be any more concerned about the regulation of the interstate transportation activity incidental to Hill's employment as an account manager, than it would in regulating interstate 'transportation' activities of an interstate traveling pharmaceutical salesmen who incidentally delivered products in his travels, or a pizza delivery person who delivered pizza across a state line to a customer in a neighboring town." *Id.* at 1289-90. Exactly so.

In sum, the crucial factor driving the creation of §1 (other than straight special-interest lobbying for seamen) was whether a distinct federal scheme of arbitration existed, or was likely to arise, for this or that specific group of state- or foreign-boundary-crossing transportation workers. Properly read, §1 does not cover workers who engage in local delivery or in incidental boundary crossings. It governs only seamen, railroad employees, and others whose primary job is to transport goods in bulk across state or foreign borders.

II. THERE IS NO PRINCIPLED WAY TO APPLY FAA §1 TO ANYONE WHO DOES NOT TRANSPORT GOODS IN BULK ACROSS BORDERS.

What the statutory text and context establish, logic confirms. There is no principled way to stretch §1 beyond seamen, railroad employees, and other workers who transport goods in bulk across borders.

"Judicial action must be governed by *standard*, by *rule*, and [it] must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2507 (2019). Yet by what "standard" or "rule" is a judge to decide which workers not literally engaged in cross-border shipping are to fall within the §1 exemption? Is it enough to work *closely* with shippers while not transporting goods oneself? *Palcko v. Airborne Express, Inc.*, 372 F.3d 588, 593 (3d Cir. 2004); cf. *Tenney*, 207 F.2d at 452. Is it enough to *occasionally* transport goods across state lines? *Int'l Broth. of Teamsters Local Union No. 50 v. Kienstra Precast, LLC*, 702 F.3d 954, 957 (7th Cir. 2012). Is it enough to *directly* handle, intrastate, goods arriving from out of state? *Rittmann v. Amazon.com, Inc.*, 383 F. Supp. 3d 1196, 1201 (W.D. Wash. 2019). How close is close enough? How often is often enough? How direct is direct enough? And above all: *Why*? No

"principled, rational" basis can be "found in the . . . law[]" for any of these tests. 139 S. Ct. at 2507. Each is entirely unmoored from the statute itself.

The apotheosis of this approach appears in *Lenz v. Yellow Transportation, Inc.*, 431 F.3d 348 (8th Cir. 2005)—a case the trial court relied on extensively. *Lenz* puts forth eight "non-exclusive" (!) factors for "determining whether an employee is so closely related to interstate commerce that he or she fits within the § 1 exemption," *id.* at 352. These factors include whether "the employee handles goods that travel interstate" and whether a "nexus . . . exists between the employee's job duties and the vehicle the employee uses in carrying out his duties." *Id.* Only one and a half of the *Lenz* factors are truly rooted in §1. The full-credit factor is whether an employee "is within a class of employees for which special arbitration already existed when Congress enacted the FAA." *Id.* The half-credit factor is "whether a strike by the employee would disrupt interstate commerce," *id.*—full credit being achieved if one adds: "in a fashion that would likely spur Congress to pass a unique alternative-dispute-resolution mechanism for that employee and his peers."

"When an appellate judge says that the . . . issue must be decided . . . by a balancing of all the factors involved, he begins to resemble a finder of fact more than a determiner of law." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1182 (1989). Because "each judge" will "use[] his favorite factors in every case," there will "be no common ground," *United States v. Pinto*, 875 F.2d 143, 145 (7th Cir. 1989); judges will apply disparate policies and reach inconsistent results. A basic aspect of justice is the like treatment of like cases. "And the trouble with the discretion-conferring approach to judicial law making is that it does not satisfy this sense of justice very well." Scalia, supra, 56 U. Chi. L. Rev. at 1178. Although "we will have . . . balancing modes of analysis with us forever," those modes should "be avoided where possible." *Id.* at 1187. By introducing a balancing test where none is needed, *Lenz* sows confusion where there can, and should, be clarity.

True enough, many "distinctions of the law are distinctions of degree," *Panhandle Oil Co. v. Miss. ex rel. Knox*, 277 U.S. 218, 223 (1928) (Holmes, J., dissenting), and "courts are apt to err by sticking too closely to the words of a law where those words import a policy that

goes beyond them," *Olmstead v. United States*, 277 U.S. 438, 469 (1928) (Holmes, J., dissenting). But this is not such a case. This is not a situation in which "we must consider . . . two objects of desire both of which we cannot have and make up our minds which to choose." *Id.* The Court is not "free to choose between two principles of policy," *id.*, because §1 does not contain within itself any such *dueling* policies. There is only, on the one hand, a law that "seeks broadly to overcome judicial hostility to arbitration agreements," *Circuit City*, 532 U.S. at 118, and, on the other, an exception for "the workers over whom the commerce power [i]s most apparent"; an exception that can be explained only as a carveout for discrete industries with "established or developing statutory dispute resolution schemes covering specific workers," *id.* at 120-21. Expanding §1 beyond those "specific workers"—beyond seamen, railroad workers, and other border-hopping transporters—"would not answer to any concern expressed to or by Congress in the debates leading up to the passage of the arbitration act." *Pryner*, 109 F.3d at 358.

A court should not engage in a flight of logical fancy to extend §1; it should, if anything, employ some common sense to constrain it. *Yates*

v. United States, 135 S. Ct. 1074 (2015), offers an exemplary model. "To prevent federal authorities from confirming that he had harvested undersized fish" in federal waters, Yates "ordered a crew member to toss the suspect catch into the sea." *Id.* at 1078. Yates was convicted of knowingly destroying a "tangible object" in violation of 18 U.S.C. § 1519. "A fish," a plurality of the Court wrote, "is no doubt an object that is tangible" *Id.* at 1079. Case closed? No, the plurality said, because §1519 "was enacted as part of the Sarbanes-Oxley Act of 2002, 116 Stat. 745, legislation designed to protect investors and restore trust in financial markets following the collapse of Enron Corporation." *Id.* To count the tangible object "fish" as a "tangible object" under §1519 "would cut §1519 loose from its financial-fraud mooring." *Id.* "Mindful that in Sarbanes-Oxley, Congress trained its attention on corporate and accounting deception and cover-ups," the plurality construed "tangible object" to include only items that can be "used to record or preserve information." *Id.*

Mindful that in FAA §1, Congress trained its attention on transportation workers with their own distinct federal arbitration schemes, this Court should construe "any other class of workers

engaged in foreign or interstate commerce" to include only those who regularly transport goods in bulk across state or national borders.

* * *

Not even a worker who makes occasional deliveries across state lines falls within §1, properly understood. *Hill*, 398 F.3d at 1288-90. Waithaka, who made only local deliveries intrastate, likewise falls well outside the exemption. Like most other workers, he must obey the FAA and honor his arbitration agreement.

CONCLUSION

The order denying Amazon's motion to compel arbitration should be reversed.

November 20, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify:

(i) That this brief complies with the page limit set forth in Circuit Rule 29-2(c)(2). The brief contains 4,445 words.

(ii) That this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared using Microsoft Office Word 2010 and is set in 14-point Century Schoolbook font.

November 20, 2019

/s/ Richard A. Samp

CERTIFICATE OF SERVICE

I certify that on November 20, 2019, I filed the foregoing brief of Washington Legal Foundation via the CM/ECF system and served the foregoing via the CM/ECF system on all counsel who are registered CM/ECF users.

/s/ Richard A. Samp