No. 17-340

IN THE

Supreme Court of the United States

NEW PRIME, INC.,

Petitioner,

v.

DOMINIC OLIVEIRA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF STATUTORY CONSTRUCTION SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT DOMINIC OLIVEIRA

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are law school professors engaged in the teaching and study of principles of statutory construction.[2] We have taught, researched, and published books and articles about the importance of reading and interpreting legal texts faithfully and diligently through different analytical, rhetorical, and linguistic frames.

We write as teachers and admirers of excellent legal writing. We teach law students that the legal profession adheres to certain standards of analytical care, including that statutes are to be read with close attention to their text, context, and history. We believe our shared commitment to those standards leads to only one conclusion in this case – that application of key canons of statutory construction to the "contracts of employment" language in the Federal Arbitration Act's exemption applies to all transportation workers without exclusion of workers who are deemed to be independent contractors and without the legally protected status of "employees."

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1. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, or their counsel made a monetary contribution to its preparation or submission. Both parties have consented to the filing of this brief.

2. Professor Nantiya Ruan was the primary author of this brief, with review by the signatories, which are listed in the Appendix to this brief.

SUMMARY OF THE ARGUMENT

The First Circuit's opinion in *Oliveira v. New Prime, Inc.*, reflects a well-reasoned, thoughtful approach to statutory construction. Petitioner attempts to upend that decision and contorts the canons of statutory construction beyond their reasonable parameters in a miscarriage of justice. We agree with Justice Antonin Scalia and Bryan A. Garner that the legal system relies upon a "sound approach" in interpreting legal texts. A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal Texts* 3 (2012). Concluding that the "contracts of employment" statutory exception in the Federal Arbitration Act of 1925 (FAA)[3] is limited to only those with the legal status of "employees," is not sound.

First, the words in statutes are read in light of their ordinary, plain meaning. Also, those words are understood from the perspective of what was meant *when they were drafted*. Petitioner's argument, which rests on modern dictionary definitions instead of inquiring into the terms' meaning at the time the FAA was enacted, fails to comply with those canons of statutory construction and should be disregarded. Moreover, Petitioner incorrectly applies the *ejusdem generis* and surplusage canons to the statutory language at issue. To give merit to those arguments would undermine those canons' usefulness and purpose in supporting a system of faithful interpretation of legal texts.

3. The FAA's Section 1 exemption states: "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.

Because the First Circuit's decision reflects the appropriate use of these important canons of construction, *Amici* urge this Court to uphold it.

ARGUMENT

I. Petitioner's Reliance on a 2014 Dictionary Definition of "Employment Contract" and the Legal Status Definitions of "Employee" Are Not Probative to what "Contracts of Employment" Meant when the FAA was Drafted by Congress in 1925.

Well-established statutory construction principles support the First Circuit's holding that the FAA's reference to "contracts of employment" means "agreements to do work" and is not limited to workers with the legal status of "employees." In arguing against this holding, Petitioner relies upon one modern dictionary definition of "employment contract" and what "employee" meant in the context of establishing legal status. Neither argument is persuasive nor probative on what "contracts of employment" means in the FAA.

A. "Contracts of Employment" in the FAA Must Be Read in its Ordinary, Fixed Meaning, which Supports the First Circuit's Interpretation.

It is axiomatic that statutory construction begins with the plain language of the statute by giving its words their ordinary meaning. "The ordinary-meaning rule is the most fundamental semantic rule of interpretation" and "[i]nterpreters should not be required to divine arcane nuances or to discover hidden meanings." A. Scalia & B.A. Garner, *Reading Law: The Interpretation of Legal*

Texts 69 (2012). "[T]he meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485, 37 S. Ct. 192, 61 L. Ed. 442 (1917). In essence, "[w]ords are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense." Scalia & Garner, *supra*, at 69.

Moreover, statutory words and phrases are given their ordinary meaning at the time of adoption. This "fixed meaning canon" requires that words be "given the meaning they had when the text was adopted." *Id.* at 78. The Court's "job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2070 (2018) (citing *Perrin v. United States,* 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed.2d 199 (1979)). The meaning of words in legal rules should be constant because "[w]ords change meaning over time, and often in unpredictable ways"; accordingly, "misunderstand[ing] and misrepresent[ation]" arises if meanings are not held constant. Scalia & Garner, *supra*, at 78. Importantly, "[w]hile every statute's *meaning* is fixed at the time of enactment, new *applications* may arise in light of changes in the world." *Wis. Cent. Ltd.*, 138 S. Ct. at 2074 (emphasis in the original) (noting that "money" meant "medium of exchange" when the statutory language was enacted, but what qualifies as a "medium of exchange" may "depend on the facts of the day").

For example, in *Perrin v. United States,* this Court rejected the argument that the Travel Act incorporated the common-law definition of "bribery" because, by 1961 when the Act was passed, "the common understanding and meaning of 'bribery' had extended beyond its early common-law definitions." 444 U.S. 37, 45, 100 S. Ct. 311, 315-16, 62 L. Ed.2d 199 (1979). For this reason, the Court concluded that "the generic definition of bribery, rather than a narrow common-law definition, was intended by Congress." *Id.* at 49, 100 S. Ct. at 317.

Together, these two statutory construction canons instruct that the phrase "contracts of employment" must be given their everyday, ordinary meaning at the time the FAA was adopted in 1925, unless there is evidence of a technical meaning. That is precisely what the First Circuit did in its decision below in interpreting the FAA's exemption at issue. After determining that in 1925, "contracts of employment" did not have a technical legal definition (either statutorily or in the common law), and analyzing what "contracts" and "employment" meant by looking to contemporaneous authorities, the court held that "contracts of employment" meant "agreements to perform work," not limited to workers who could prove or had already proved (under an entirely different legal framework from the FAA) that they were "employees." *See Oliveira v. New Prime, Inc.*, 857 F.3d 7, 17-22 (1st Cir. 2017).

Petitioner's position that the phrase "contracts of employment" excludes independent contractors hinges on the argument that "contracts of employment" did have a technical meaning in 1925. But Petitioner fails to make that case when it relies solely upon the definition of an "employment contract" from the 2014 Tenth Edition of *Black's Law Dictionary* as a "contract between an *employer and employee* in which the terms and conditions of *employment* are stated." Pet. Br. at 17 (emphasis in original) (citing *Black's Law Dictionary* 393 (10th ed. 2014)). Petitioner's reliance on the 2014 Black's Law Dictionary is unavailing. First, while the 2014 edition indicates that the term "employment contract" was first used in 1927, it does not provide a 1927 definition and instead, only supplies the modern one (to which Petitioner relies). The 2014 definition is not the definition used in 1927; instead, the date indication merely shows that 1927 was the earliest known usage of that phrase. Black's Law Dictionary states that "[t]he parenthetical date preceding many of the definitions show the earliest known use of the word or phrase in English." *Black's Law Dictionary* (10th ed. 2014), *Guide to the Dictionary,* at xxvi. The conclusion that "employment contracts" or "contracts of employment" were not used as common phrases with technical meanings is supported by the fact that neither the 1910, nor the 1933 editions of Black's Law Dictionary have entries for either phrase. *See Black's Law Dictionary* (2d ed. 1910); *Black's Law Dictionary* (3d ed. 1933).

Moreover, because the earliest known usage (1927) is two full years after the enactment of the FAA (1925), Petitioner's argument clearly and unmistakably violates the fixed-meaning canon. Petitioner cites no other authority for narrowly defining "contracts of employment" to exclude certain workers.

To bolster this thin record, Petitioner relies upon several different legal frameworks for determining "employee" status, as controlling. *See* Pet. Br. at 17-22.

Relying on what an "employee" means in tort or labor law is not conclusive to what "employment" means for purposes of the FAA simply because both words have the common root "employ." It makes no linguistic sense for "contracts of employment" to mean only "contracts that create an employee relationship," as opposed to "contracts for work." *See* Scalia & Garner, *supra*, at 45-46 (it is "verbal legerdemain" to use the legal term of art for "damages" to interpret what "damage" means in a statute). For example, this Court reversed a lower court for interpreting what "personal" means by relying upon the meaning of "person" just because it shares a common root. *FCC v. AT&T Inc.*, 562 U.S. 397, 401, 131 S. Ct. 1177, 1181, 179 L. Ed. 2d 132 (2011) (reversing lower court and holding in a statutory interpretation case that the ordinary meaning of "personal" is derived from the word "person"; disagreeing with the lower court's reasoning that "the root from which the statutory word [personal] ... is derived" is the defined term "person"). Similarly, "employment" has its own meaning separate and apart from the legal status of "employees" and the First Circuit correctly interpreted "employment" by looking at legal authorities in 1925, to decide that it encompassed broad forms of work arrangements.

Despite its own leap from using the legal status of employees to understand what "employment" means, Petitioner argues that the First Circuit's "cobbl[ing] together" a meaning of "employment" separate from "contracts of employment" is in error. Pet. Br. at 23-24. The First Circuit correctly looked to contemporaneous dictionary definitions of "employment" as "an act of employing" and the verb "employ" as "to make use of the services of; to have or keep at work; to give employment to." *Oliveira*, 857 F.3d at 20.

In contrast to Petitioner's argument, courts routinely look to the words of a phrase to assess its meaning. "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." *United States v. Menasche*, 348 U.S. 528, 75 S. Ct. 513, 99 L. Ed. 614 (1955). For example, in *Kirtsaeng v. John Wiley & Sons, Inc.*, the Court held that "each word of the five-word phrase [at issue] had a distinct purpose." 568 U.S. 519, 530, 133 S. Ct. 1351, 1358, 185 L. Ed. 2d 392 (2013) ("The first two words of the phrase, 'lawfully made,' suggest an effort to distinguish those copies that were made lawfully from those that were not, and the last three words, 'under this title,' set forth the standard of 'lawful[ness].'"). *See also Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018) (in interpreting the phrase "solely by reason of a failure to vote" in the NVRA, holding that "the meaning of these words is straightforward. 'Solely' means 'alone' . . . . And 'by reason of' is a 'quite formal' way of saying '[b]ecause of.'") (internal citations to dictionaries omitted).

In sum, the First Circuit's interpretation of "contracts of employment" is faithful to both the ordinary meaning *and* fixed-meaning canons and should be upheld.

B. Reading "Contracts of Employment" in the Context of the FAA Further Supports the First Circuit's Interpretation.

Statutory construction also requires employing a "fair reading" methodology to comprehend the "purpose of the text," which is a "vital part of its context." Scalia & Garner, *supra*, at 33. "Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486, 126 S. Ct. 1252, 1257, 163 L. Ed. 2d 1079 (2006). *See also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 115–16, 121 S. Ct. 1302, 1309, 149 L. Ed. 2d 234 (2001) ("We must, of course, construe the 'engaged in commerce' language in the FAA with reference to the statutory context in which it is found and in a manner consistent with the FAA's purpose."); *Jarecki v. G.D. Searle & Co.,* 367 U.S. 303, 307, 81 S. Ct. 1579, 6 L. Ed.2d 859 (1961) ("[A] word is known by the company it keeps.").

The phrase "contracts of employment" is part of the explicit carve-out to the FAA's federal policy favoring arbitration agreements. Section 1 of the FAA provides that the Act shall 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. This Court has interpreted this section to "exempt[ ] from the FAA. . . contracts of employment of transportation workers." *Circuit City*, 532 U.S. at 119, 121 S. Ct. 1302. In so holding, the *Circuit City* Court acknowledged "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods" at the time of enactment. 532 U.S. at 121, 121 S. Ct. 1302. As the First Circuit noted: "Given that concern, the distinction that Prime advocates based on the precise employment status of the transportation worker would have been a strange one for Congress to draw: Both individuals who are independent contractors performing transportation work and employees performing that same work play the same necessary role in the free flow of goods." *Oliveira*, 857 F.3d at 22.

Additionally, other contemporaneous authorities from the era of the FAA's enactment suggest that "contracts of employment" were not agreements only for workers that can prove employee status. The First Circuit outlined numerous contemporaneous legal authorities, including judicial opinions, the American Law Report, and national treatises, that "suggest that the phrase can encompass agreements of independent contractors to perform work." *Id.* at 20.

Because reading "contracts of employment" in the context of the FAA and other legal authorities of the time further supports the First Circuit's holding, it should be affirmed.

II. The *Ejusdem Generis* Canon Does Not Support Limiting "Contracts of Employment" to "Employees."

Petitioner argues that the FAA's Section 1 exception is only for "*certain* 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce,'" Pet. Br. at 24 (emphasis in original), by relying on the *ejusdem generis* canon of statutory construction, *id.* at 26-27. Because this reading does not comport with statutory construction principles, nor does it follow Supreme Court precedent, it should be ignored.

The *ejusdem generis* canon provides that, where a seemingly broad clause constitutes a residual phrase, it must be controlled by, and defined with reference to, the "enumerated categories . . . which are recited just before it," so that the clause encompasses only objects similar in nature. *Circuit City Stores, Inc. v. Adams,* 532 U.S. 105, 115, 121 S. Ct. 1302, 149 L.Ed.2d 234 (2001). In *Circuit City, Inc. v. Adams*, this Court analyzed the FAA's Section 1 exemption language at issue here through the lens of the *ejusdem generis* canon and determined that "the words 'any other class of workers engaged in . . . commerce' constitute a residual phrase" that followed an "explicit reference to 'seamen' and 'railroad employees." 532 U.S. 105, 114, 121 S. Ct. 1302, 1308, 149 L. Ed. 2d 234. Accordingly, the Court held that "[u]nder this rule of construction the residual 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 105, 121 S. Ct. at 1308. The Court relied upon this interpretation based on the *ejusdem generis* canon to hold that "any other class of workers" meant "transportation workers." *Id.* at 119, 121 S. Ct. at 1311.

Here, "contracts of employment" is *not* a residual phrase to be interpreted pursuant to the *ejusdem generis* canon in support of Petitioner's argument. The *ejusdem generis* canon applies in syntactic constructions of particularized lists followed by a broad generic phrase. Scalia & Garner, *supra* at 200. *See Wash. State Dept. of Soc. & Health Servs. v. Guardianship Estate of Keffeler,* 537 U.S. 371, 384, 123 S. Ct. 1017, 154 L. Ed.2d 972 (2003) ("Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.").

But here, "contracts of employment" comes *before* the list of "seamen, railroad employees, and any other class of workers." *See* 9 U.S.C. §1. Petitioner urges the Court to stretch this canon to divine meaning beyond the particularized list and generalized ending phrase and look backward to give meaning to a phrase *before* the particularized list. *See* Pet. Br. at 26-27. To do so violates the explicit terms of the canon.

The *ejusdem generis* canon, as well as its interpretive cousin, *noscitur a sociis* (words are to be "known by their companions"), teach legal readers to determine what common attribute connects the words grouped together. *See Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 225–26, 128 S. Ct. 831, 839, 169 L. Ed. 2d 680 (2008); *Jarecki v. G.D. Searle & Co.,* 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961). The common attribute that connects the items in the FAA's exclusion is work in the transportation industry, not employee status. The first item, "seamen," are not defined by their employee status, but instead, by the "operation and welfare of the ship when she is upon a voyage." *Warner v. Goltra,* 293 U.S. 155, 157, 55 S. Ct. 46, 47, 79 L. Ed. 254 (1934) (for purposes of the 1920 Jones Act, finding "a seaman is a mariner of any degree, who lives his life upon the sea. It is enough that what he does affects the operation and welfare of the ship when she is upon a voyage.") (internal quotation omitted). Taking a closer look in 1991, of what "seamen" meant in the early twentieth century, this Court held that "a necessary element" is that "a seaman perform[s] the work of a vessel." *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 355, 111 S. Ct. 807, 817, 112 L. Ed. 2d 866 (1991). Importantly, the Court does not engage in an analysis of what constitutes an "employee" (such as a right to control test) in defining a seaman. Instead, it looks to the performance of work at sea.

Similarly, the second item, "railroad employee," refers to workers in the railroad industry, not to the subset of workers who could prove they were common-law servants, as witnessed by railroad legislation passed in the late nineteenth and early twentieth centuries. For example, the Erdman and Newlands Acts defined the railroad "employees" subject to the Acts as "all persons actually engaged in *any* capacity in train operation or train service of any description"—including independent contractors. Erdman Act, 30 Stat. 424 (1898) (emphasis added); Newlands Act, 38 Stat. 103 (same). Moreover, the federal Railroad Labor Board, put in place by Congress to govern labor disputes in the industry, held that "[w]hen Congress in [the Transportation Act of 1920] speaks of railroad employees it undoubtedly contemplates" not just the subset of workers who have a master-servant relationship with the railroad, but all "those engaged in the customary work directly contributory to the operation of the railroads." *Ry. Emps.' Dep't, A.F.L. v. Indiana Harbor Belt R.R. Co.,* Decision No. 982, 3 Dec. U.S. R.R. Lab. Bd. 332, 337 (1922).

What is common between the first two items in the list ("seamen" and "railroad employees") is that they perform work in transportation, not that they are both "employees." The *ejusdem generis* canon teaches that it is "[w]hen the initial terms all belong to an obvious and readily identifiable genus, one presumes that the speaker or writer has that category in mind for the entire passage." Scalia & Garner, *supra*, at 199. Moreover, the *noscitur a sociis* canon provides that when any words "are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar." *Id.* at 195. "Th[is] canon especially holds that 'words grouped in a list should be given related meanings.'" *Id.* (citing *Third Nat'l Bank in Nashville v. Impact Ltd.*, 431 U.S. 312, 322 (1977)).

Accordingly, in interpreting the third item, "any other class of workers engaged in foreign or interstate commerce," the phrase must be interpreted by the words around it. This Court has already done so in *Circuit City* when it determined that this "residual exclusion" means transportation workers, and not all workers who engage in commerce, because the residual phrase must be read in line with seamen and railroad employees. 532 U.S. 105, 121, 121 S. Ct. 1302, 1312, 149 L. Ed. 2d 234. Note that the *Circuit City* Court did not limit the phrase to transportation "employees," but instead interpreted it to mean transportation "workers." *Id.*

This interpretation also is in line with the fair reading methodology. Again, the Court's decision in *Circuit City* is directly on point; it held that this "residual exclusion" means transportation workers, not transportation employees, because "Congress' demonstrated concern with transportation workers and their necessary role in the free flow of goods explains the linkage to the two specific, enumerated types of workers identified in the preceding portion of the sentence." *Id.* As the First Circuit pointed out, it would be "strange" to interpret the FAA's exclusion to apply only to employees given the context of the statute: "Both individuals who are independent contractors performing transportation work and employees performing that same work play the same necessary role in the free flow of goods." *Oliveira*, 857 F.3d at 22.

III. Reading the Residual Exclusion of the FAA's Section 1 to Include all Transportation Workers Does Not Make Section 2 Language Surplusage.

Petitioner argues that reading the phrase "contracts of employment" to include independent contractors would ignore the "textual distinction" between Section 1's exemption ("nothing herein contained shall apply to contracts of employment") and Section 2's substantive mandate ("[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy . . . shall be valid, irrevocable, and enforceable") and make the "evidencing a transaction" language of Section 2 "mere surplusage." Pet. Br. at 31. Because Petitioner ignores the different purposes of Sections 1 and 2, and that adherence to the ordinary meaning and surplusage canons allows for both sections to have independent operation, its argument fails.

The surplusage canon teaches that "[i]f possible, every word and every provision is to be given effect. . . . None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequences." Scalia & Garner, *supra*, at 174. Generally, "courts avoid a reading that renders some words altogether redundant," such that interpreters should give meanings to provisions that allow both "some independent operation." *Id.* at 176. *See, e.g.*, *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 545, 114 S. Ct. 1757, 1765, 128 L. Ed. 2d 556 (1994) (holding a statutory phrase is not superfluous where it will continue to have independent meaning). However, if necessary, "a court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage." *Id. See also Lamie v. U.S. Tr.*, 540 U.S. 526, 536, 124 S. Ct. 1023, 1031, 157 L. Ed. 2d 1024 (2004) ("Surplusage does not always produce ambiguity and our preference for avoiding surplusage constructions is not absolute. . . . We should prefer the plain meaning since that approach respects the words of Congress.").

Here, giving the two FAA Sections their ordinary meanings allows for independent operation of each and is therefore outside the surplusage canon. Section 1 states the specific exemption from the FAA for work contracts for transportation workers, as this Court held in *Circuit City*. Section 2 states the substantive mandate of the FAA—that arbitration agreements in maritime and commercial contracts are valid and enforceable. While one is an explicit carve-out, the other is the "centerpiece" of the FAA, providing the substantive mandate that covered agreements to arbitrate are enforceable just as any other contract. *See Vaden v. Discover Bank*, 556 U.S. 49, 64, 129 S. Ct. 1262, 1274, 173 L. Ed. 206 (2009) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 625 (1985)) (internal quotation marks omitted). Because both have "independent operation" when given their ordinary meaning, Petitioner's surplusage argument fails.

Interpreting the two statutory Sections to have independent operative meaning comports with Supreme Court precedent on how the surplusage canon works in tandem with the ordinary and fixed meaning canons. For example, in *Russello v. United States*, a unanimous Court engaged in statutory construction of the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961–1968. 464 U.S. 16, 17, 104 S. Ct. 296, 297, 78 L. Ed.

2d 17 (1983). At issue was interpreting RICO's forfeiture provision, § 1963(a)(1), and, specifically, the meaning of the words "any interest [the defendant] has acquired . . . in violation of section 1962." 464 U.S. 16, 17, 104 S. Ct. 296, 297, 78 L. Ed. 2d 17. Beginning with the ordinary meaning of "interest," the Court relied upon the word's ordinary meaning in the law (namely, an interest in real property) and refused to give it the broad reading argued by the petitioner. The Court then "fortified" its holding by looking to the context of the RICO statute's two sections and finding that its interpretation allowed for independent operation of both sections. *Id.* at 22-23, 104 S. Ct. 296, 300, 78 L. Ed. 2d 17. The Court dismissed the petitioner's argument that reading them in such a way would make the second section mere surplusage. *Id.*

In doing so, the Court pointed to the fact that the term "interest" is in different phrases in each section. The Court held that "[w]e refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship." *Id.* at 23, 104 S. Ct. 296, 300, 78 L. Ed. 2d 17.

Here too, the Court should not presume that Congress made a drafting mistake, but instead meant two different things when it drafted "contracts of employment" for Section 1's exemption and "contract evidencing a transaction involving commerce" for Section 2's substantive mandate. While the first limits the FAA's reach to exclude work contracts in the transportation industry, the second reflects the broad reach of the FAA into all other agreements involving commerce. Because both can be read to give independent, operative meaning, this Court should recognize that difference and not assume it was a drafting mistake.

CONCLUSION

Because well-established canons of statutory construction support the First Circuit's holding that "contracts of employment" include all transportation workers, and not merely those deemed "employees," its holding should be upheld.

Dated: July 25, 2018

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