Case No. 20-16030

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN CAPRIOLE, MARTIN EL KOUSSA, and VLADIMIR LEONIDAS, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

v.

UBER TECHNOLOGIES, INC. and DARA KHOSROWSHAHI,

Defendants-Appellees,

On Appeal from The United States District Court
for the Northern District of California
The Honorable Edward M. Chen (Case No. 3:20-cv-02211-EMC)

BRIEF OF *AMICUS CURIAE* LYFT, INC. IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Lyft, Inc., states that it has no parent corporation and that no publicly held corporation owns more than ten percent of Lyft, Inc.'s stock.

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INTEREST OF *AMICUS CURIAE*[1]

Lyft, Inc. ("Lyft") is a technology company that offers a software platform enabling people seeking rides to connect with drivers seeking to provide local transportation. Drivers using the Lyft platform currently provide such transportation to riders in every state in the country, including in every major city in this Circuit. Most drivers using the Lyft platform have agreed to submit any disputes with Lyft to individual arbitration. Lyft therefore has a substantial interest in this appeal, particularly with respect to the application of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et. seq.*, to rideshare drivers like those who use Lyft's and Uber's platforms.[2] Lyft respectfully submits that this brief will be useful to the Court; the brief contains an in-depth discussion of relevant Supreme Court decisions not included in the parties' briefs, including many decisions pre-dating the FAA's 1925 enactment, that illuminate a widely held understanding of what Congress meant by the phrase "engaged in . . . interstate commerce." 9 U.S.C. § 1.

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[1] All parties have consented to the filing of this *amicus* brief. No party's counsel contributed to the authorship of this brief, nor has any party or their counsel, or any person or entity other than Lyft, contributed money intended to fund the preparation or submission of this brief.

[2] In a separate appeal pending before this Court (No. 20-15689), in which briefing is not yet complete, Lyft is seeking affirmance of the district court's decision in *Rogers v. Lyft, Inc.*, 2020 WL 1684151 (N.D. Cal. Apr. 7, 2020), which ruled that the exemption to the FAA set forth in Section 1 does not apply to drivers using the Lyft platform.

INTRODUCTION

Plaintiffs argue that they are exempt from the FAA under Section 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. That exemption is inapplicable here. As Uber explains, rideshare drivers, as a class, are not "engaged in . . . interstate commerce" within the meaning of Section 1's residual clause.

First, rideshare drivers are not "engaged in . . . interstate commerce" by virtue of transporting riders to and from airports. In *Rittmann v. Amazon.com, Inc.*, 2020 WL 4814142 (9th Cir. Aug. 19, 2020) (petition for rehearing en banc pending), this Court applied a "flow of interstate commerce" analysis to assess whether Amazon Flex delivery drivers are "engaged in . . . interstate commerce" within the meaning of the Section 1 exemption. *Id.* at *4. Uber correctly argues that local transportation can be within the flow of interstate commerce only if that transportation is "part of an integrated and coordinated chain of interstate transportation"—one in which the intrastate portion of the journey is, essentially, part of a pre-arranged package interstate trip. Uber Br. (ECF No. 25) 32. Unlike Amazon's delivery of an item from a warehouse in one state to a customer in another, the local rides provided by rideshare drivers are not integrated with any

interstate travel that a passenger may happen to undertake before or after a ride. *Id.*; *contra* Plaintiffs' Br. (ECF No. 13) 58-60.

A large body of Supreme Court precedent not discussed by the parties here, running across various contexts in which that Court has considered what it means to be engaged in interstate commerce, draws a distinction between the local leg of a coordinated, integrated interstate trip (as carried out by the Amazon Flex drivers at issue in *Rittmann*) and mere local transport to and from a place where an interstate trip could take place or could have taken place (as carried out by rideshare drivers). That precedent—much of which pre-dates and is close in time to the enactment of the Section 1 exemption in 1925—cements beyond all doubt the conclusion that a class of workers engaged in the latter category of work is not thereby operating as part of the flow of interstate commerce. The distinction is found in decisions regarding transport of passengers as well as transport of goods. It is found in pre-1925 cases interpreting the Federal Employers' Liability Act ("FELA") such as the ones on which *Rittmann* relied in interpreting the Section 1 exemption. *See Rittmann*, 2020 WL 4814142, at *4. And it is found throughout cases that interpret various other statutes and arise in various other contexts in

which the Supreme Court has had to distinguish between engagement in interstate commerce and engagement in intrastate commerce.[3]

Second, rideshare drivers are not "engaged in . . . interstate commerce" by virtue of the fact that a tiny percentage of the local rides they provide happen to cross state lines because of an accident of geography. A "class" cannot be said to be "engaged in" certain activity unless that engagement is a characteristic common to the members of the class, not something that only a subset of the class does on an incidental basis. Here, any interstate rides provided by rideshare drivers are incidental, not a "central part of the job description." *Wallace v. Grubhub Holdings, Inc.*, 2020 WL 4463062, at *3 (7th Cir. 2020).

Finally, the conclusion that rideshare drivers are not engaged in interstate commerce within the meaning of Section 1 of the FAA is confirmed by examination of the statute's purposes. A dispute or even a strike involving rideshare drivers does not threaten to block the channels of interstate commerce,

[3] Lyft does not concede that a "flow of commerce" analysis is proper with respect to the Section 1 exemption or that cases from other areas of the law, interpreting statutes other than the FAA, are necessarily pertinent. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001); *United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 277 (1975). But Lyft recognizes that *Rittmann* adopts a "flow" analysis and that *Rittmann* relies on non-FAA cases such as FELA cases and antitrust cases in interpreting the Section 1 exemption. Accordingly, without forfeiting other arguments on behalf of Lyft, this brief hews to the mode of analysis applied in *Rittmann*.

and application of the FAA to such drivers would not "unsettl[e]" any separate "established or developing statutory dispute resolution schemes." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 (2001). The Section 1 exemption therefore should not be extended to cover rideshare drivers. And, to the extent any doubt were to remain, a narrower interpretation of the Section 1 exemption should prevail, as the Supreme Court has instructed. *See id.* at 118.

ARGUMENT

I. LOCAL TRANSPORTATION PROVIDED BY RIDESHARE DRIVERS IS NOT IN THE "FLOW" OF INTERSTATE COMMERCE BECAUSE THAT TRANSPORTATION IS NOT PART OF A COORDINATED, INTEGRATED INTERSTATE TRIP

Numerous Supreme Court decisions arising in various legal contexts, many of which issued before or near in time to Congress's enactment of the Section 1 exemption in 1925, draw a clear distinction between the local leg of an integrated interstate trip (which is part of the flow of interstate commerce), and local transport to and from a place where an interstate trip could take place (which is not). Rideshare drivers' transportation of passengers to and from airports falls into the latter category.

A. Supreme Court Decisions Involving Transport Of Passengers Demonstrate That Local Transportation Provided By Rideshare Drivers Is Not In The "Flow" Of Interstate Commerce

Cases involving transport of passengers are most pertinent to the question whether rideshare drivers are in the "flow of interstate commerce," *Rittmann*, 2020

WL 4814142, at *6, within the meaning of Section 1. As the Supreme Court has explained, goods have no ability to choose how "to arrive at or leave" any particular place, *United States v. Yellow Cab*, 332 U.S. 218, 232 (1947), while passengers obviously do. And passengers may have an intention relating to interstate travel that is not shared or even known by the workers who are transporting them—for instance, even when arriving in a car at an airport, a passenger may not be planning on traveling interstate. Thus, "the limits of an interstate shipment of goods and chattels may not necessarily be the commonly accepted limits of an individual's interstate journey." *Id.* at 231.

As Uber explains, the Supreme Court's decision in *Yellow Cab*, which involves passenger transport, is highly instructive here. *Yellow Cab* distinguishes between local passenger journeys that are part of a coordinated, integrated interstate trip, and thus part of the flow of interstate commerce, and local passenger journeys that merely precede or follow an interstate trip, which are outside the flow of interstate commerce. *See* Uber Br. 33-35. And *Yellow Cab* makes clear that rideshare drivers' work in driving passengers to or from airports is in the latter category. *See id.*[4]

[4] Contrary to plaintiffs' argument (Plaintiffs' Br. 62), the fact that *Yellow Cab* was decided in 1947, after enactment of the FAA, does not reduce its relevance. The decision interpreted a Sherman Act provision enacted in 1890, before the FAA—and then, as now, the Supreme Court strove to interpret statutes to reflect the understanding of the enacting Congress. Notably, in discussing the meaning of

New York ex rel. Pennsylvania Railroad Co. v. Knight, 192 U.S. 21 (1904), a pre-FAA case involving passenger transport, draws the same distinction drawn in *Yellow Cab* and is also highly instructive. In *Knight*, the State imposed a tax on a railroad company for operating a cab service that transported passengers to and from the railway's ferry terminal, which was an interstate transit hub. *Id.* at 22. The company contended that the State was improperly regulating interstate commerce because the "cab service is merely an extension, and therefore a part of, [the company's] interstate transportation." *Id.* at 25. The Supreme Court rejected that contention, concluding instead that "the cab service is an independent local service, preliminary or subsequent to any interstate transportation." *Id.* at 28. The Court relied on the fact that the cab portion of the journey was "contracted and paid for independently of any contract or payment for strictly interstate transportation" and otherwise had "no contractual or necessary relation to interstate transportation." *Id.* at 26-27.

This case is analogous. Rideshare drivers do sometimes take customers to and from airports—but the drivers provide "an *independent* local service,

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"engaged in . . . interstate commerce" in the FAA, the Supreme Court relied on cases decided by that Court in the 1970s interpreting the Clayton Act, enacted in 1914. *See Circuit City Stores, Inc.*, 532 U.S. at 117. This Court took a similar approach in *Rittmann*. *See* 2020 WL 4814142, at *6 (relying on Clayton Act cases from the 1970s).

preliminary or subsequent to any interstate transportation." *Knight*, 192 U.S. at 28 (emphasis added). The rideshare arrangement is not contractually (or otherwise) connected to the passenger's separate agreement with the airline, so the ride has "no contractual or necessary relation to interstate transportation," *id.* at 26-27—even assuming that a passenger's presence at an airport actually involves interstate travel. Indeed, the argument that local transport constituted engagement in interstate commerce was far stronger in *Knight* than it is with respect to rideshare drivers, since in *Knight* the same company that transported the ferry passengers interstate also set up the intrastate cab trip, and did so specifically in service of the interstate ferry business. Yet the Supreme Court still found that the company's cab drivers were not "engaged in" interstate commerce. *Id.* at 28. The same must be true here.

In its recent decision in *Rittmann*, which ruled that Amazon Flex drivers who carry out a local leg of an integrated interstate shipment of goods coordinated by Amazon are operating in the flow of interstate commerce, this Court distinguished *Knight* in a way that is not relevant here. *Rittmann*, 2020 WL 4814142, at *8. *Rittmann* rejected Amazon's argument that a class of workers must themselves be engaged in crossing state lines in order to be "engaged in" interstate commerce for purposes of the Section 1 exemption. As support for that ruling, *Rittmann* noted *Knight*'s statement that "a single act of carriage or

transportation wholly within a state may be part of a continuous interstate carriage or transportation," *id.* (quoting *Knight*, 192 U.S. at 26), and concluded that Amazon Flex "drivers' transportation of goods wholly within a state are still a part of a continuous interstate transportation" within the meaning of *Knight*, *id.* That reasoning has no bearing on this case. *Knight* makes clear that although the local leg of a coordinated, integrated interstate journey like the one involved in an Amazon shipment is part of the "flow" of interstate commerce, local transport that simply begins or ends at a place where interstate travel may take place is not part of that "flow."[5]

That distinction must be correct, or absurdities would result. If *any* portion of any interstate passenger trip necessarily counted as part of the flow of interstate commerce, then a traveler who set off from her office for the train station with the intent of embarking on an interstate journey would be in that flow when she "descend[ed]" her office "building by elevator," *Yellow Cab*, 332 U.S. at 231, and so would any worker who helped transport her or her belongings, *see id.*; *Knight*,

[5] *Knight* is also not distinguishable here on the ground that the Court noted in that case that the local transport at issue was wholly intrastate. The question whether the class of rideshare drivers is "engaged in . . . interstate commerce" by virtue of the fact that a very small number of local rides happen to cross state lines is analytically distinct from the question whether the class is in the "flow" of commerce by virtue of providing local transportation to and from airports. *See* Uber Br. 26-31 (explaining why rare crossing of state lines does not trigger Section 1 exemption); pp. 20-21, *infra* (also addressing that issue).

192 U.S. at 28 ("If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged?"). And the same would be true of all forms of local transport at the beginning or end of her interstate trip. That stretches the concept of "flow" much too far. *See Wallace*, 2020 WL 4463062, at *3 (rejecting interpretation of Section 1 that "would sweep in numerous categories of workers whose occupations have nothing to do with interstate transport").

B. Supreme Court Decisions Involving Transport Of Goods Likewise Demonstrate That Local Transportation Provided By Rideshare Drivers Is Not In The "Flow" Of Interstate Commerce

1. *FELA decisions*

In *Rittmann*, this Court relied on pre-1925 cases interpreting FELA as instructive in analyzing the scope of the Section 1 exemption. *See Rittmann*, 2020 WL 4814142, at *5 & n.2.[6] FELA cases that pre-date the 1925 enactment of the FAA likewise support the distinction between coordinated, integrated interstate trips and trips involving local transport with a more attenuated connection to some interstate movement. *Rittmann* involved the former, but rideshare drivers are

[6] At the relevant time, FELA provided that "[e]very common carrier by railroad while engaging in commerce between any of the several States . . . shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce." 45 U.S.C. § 51 (1908).

engaged only in the latter—and therefore are not part of the flow of interstate commerce.

McCluskey v. Marysville & Northern Railway Co., 243 U.S. 36 (1917), sets forth that distinction clearly. In *McCluskey*, the Supreme Court held that a railroad was not engaged in interstate commerce when it transported lumber within the State to a transit hub at which the lumber was intended to be sold and from which it might be moved out of state. *Id.* at 38. The railroad "had no concern with the subsequent disposition" of the goods, and was "under no obligation to deliver them to another carrier." *Id.* at 39-40. Rather, whether the goods "were going outside of the state, depended upon chance or the exigencies of trade." *Id.* Such intrastate transport "to the depot where the journey is to commence," the Court held, is "no part of" a subsequent interstate trip, and that interstate movement does not begin "[u]ntil" those items are "actually launched on [their] way to another state, or committed" by the railroad "to a common carrier for transportation to such state." *Id.* at 38-39 (quoting *The Daniel Ball*, 77 U.S. 557 (1870)). In other words, the Court concluded that unless the intrastate shipment was part of a coordinated, integrated interstate trip, the intrastate activity was not part of the flow of interstate commerce. *See id.*; *see also Bay v. Merrill & Ring Logging Co.*, 243 U.S. 40, 42-43 (1917).

McCluskey stands in stark contrast to *Philadelphia & Reading Railway Co. v. Hancock*, 253 U.S. 284 (1920), a FELA case cited in *Rittmann* (2020 WL 4814142, at *5), and by the parties here (Plaintiffs' Br. 57-58; Uber Br. 37-38), in which the Supreme Court deemed FELA's interstate-commerce requirement satisfied. In *Hancock*, a worker served on a crew operating train cars for an in-state leg of an interstate railway journey transporting coal. *Id.* at 285-86. *Hancock* explained that the intrastate leg of the journey was within the flow of interstate commerce because that leg was part of an integrated journey out of the state organized by the railroad employer. *Id.* at 286. As the Court observed, "[t]here was no interruption of the movement" of the coal; rather, "it always continued towards points as originally intended," while different crews managed different portions of the continuous trip, all coordinated by the railroad itself. *Id.*[7]

Rittmann relied on *Hancock* because the class of workers at issue in *Rittmann* handled an intrastate leg of just such an integrated interstate journey—one that was planned and coordinated by Amazon from start to finish. *See Rittmann*, 2020 WL 4814142, at *7-9. But the case now before this Court is analogous to *McCluskey*, not to *Hancock*. When a rideshare driver transports a

[7] Plaintiffs' argument that FELA's interstate-commerce requirement was satisfied in *Hancock* simply because the coal "was bound for another state," Plaintiffs' Br. 58, is therefore incorrect.

passenger to or from an airport, neither the driver nor the rideshare platform has any relationship with, or knowledge about, the carrier that handled (or that will handle) any interstate leg of the passenger's journey, or even whether such a leg exists at all. So far as the driver and the rideshare platform are concerned, a passenger's presence at an airport may signal nothing more than an airline trip within the same state where the airport is located, or a job at an airport shop or restaurant, or a rendezvous with someone else who has arrived on an airplane. The driver is simply offering one of many available forms of local transportation, unconnected with whatever the passenger chooses to do before or afterwards—a matter that is of "no concern" whatever to the driver or the rideshare platform, *McCluskey*, 243 U.S. at 39.

2. *Decisions involving state burdens on the interstate shipment of goods*

The same distinction between a local leg of an integrated interstate journey and a local journey that is not an integrated part of an interstate trip is also set forth in Supreme Court decisions from before the FAA's 1925 enactment that assess whether States exceeded their jurisdiction by levying taxes or imposing other state-law burdens on carriers engaged in interstate commerce. In making that assessment, the Supreme Court ruled over and over again that a carrier did not engage in interstate commerce merely by virtue of transporting goods to or from a

hub of interstate transport, regardless of whether those goods previously or subsequently traveled in interstate commerce.

One of the earliest such cases is *Coe v. Town of Errol*, 116 U.S. 517 (1886), in which the Supreme Court concluded that a carrier did not become part of the flow of interstate commerce merely by transporting logs within one state to a riverbank where they were picked up for out-of-state shipment. *Id.* at 525-28. The Court stated that goods transported to a port of shipment do not become part of interstate commerce "until actually put in motion for some place out of the state, or committed to the custody of a carrier for transportation to such place." *Id.* at 526. The intrastate leg of the journey, the Court explained, is "all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation." *Id.* at 528.

Similarly, in *Chicago, Milwaukee, & St. Paul Railway, Co. v. Iowa*, 233 U.S. 334 (1914), the Supreme Court ruled that transport of cargo from a transit hub to points in the same State as that hub was not within the flow of interstate commerce simply because the cargo had arrived at the hub from out of state. *Id.* at 340-42. "[T]he fact that commodities received on interstate shipments are reshipped by the consignees . . . to other points of destination," the Court stated, "does not . . . prevent the reshipment to a point within the same state from having an independent and intrastate character." *Id.* at 343 (citing cases). The Court

reasoned that once the cargo arrived at the transit hub "the consignee" could transport or sell it "at his own discretion." *Id*. at 343. In other words, the subsequent intrastate portion of the multi-step shipment was uncoordinated with, and disconnected from, the previous interstate portion. *Id*.; *see also, e.g.*, *S. Pac. Co. v. Arizona*, 249 U.S. 472, 476-77 (1919) ("The mere intention of the shipper to ultimately continue his tour beyond the state . . . did not convert the contemplated intrastate movement into one that was interstate."); *Baltimore & Ohio Sw. R.R. Co. v. Settle*, 260 U.S. 166, 167-68, 173-74 (1922).

Atlantic Coast Line Railroad Co. v. Standard Oil Co. of Kentucky, 275 U.S. 257 (1927), a case decided very shortly after Congress enacted the FAA, employs the same reasoning. In that case, the Supreme Court ruled that a railroad company was engaged in purely intrastate commerce when transporting oil from storage tanks at a port terminal in Florida to destinations within the same State, even though the oil previously had been brought to the terminal by ship from out-of-state origin points. *Id*. at 267. The Supreme Court explained that "the railroad company," which "aid[ed] the delivery of the oil" from the tanks to intrastate locations, did not have "anything to do with determining what the ultimate destination of the oil is, or . . . any interest in it, or any duty to discharge in respect to it, except that the railroad company . . . accepted the duty of transporting it in Florida to the places designated by the plaintiff company." *Id*. at 269-70. Because

the transportation by railroad was not coordinated with the prior interstate ship delivery as part of an integrated journey, the Supreme Court characterized the railroad segment of the trip as engagement only in "intrastate commerce." *Id*. at 267.

The import of those cases is unmistakable. Like the carrier depositing logs on the riverbank in *Coe*, a rideshare driver taking a passenger to the airport ends her journey when she drops the passenger off, and has no role in arranging or organizing any subsequent interstate leg of the passenger's journey. And like the carriers in *Chicago* and *Atlantic Coast Line Railroad*, a rideshare driver picking a passenger up from an airport is not part of any arrangement to integrate or coordinate the rideshare trip and the airline travel, and neither knows nor cares where the passenger has been or whether the passenger's point of origin was in a different State. Under those decisions, then, the rideshare driver is not in the flow of interstate commerce—even if the passenger is separately embarking, or has separately embarked, on an interstate airline trip.

3. *Antitrust decisions*

Supreme Court decisions addressing whether local transport of goods satisfies the interstate-commerce requirement of the federal antitrust laws are to the same effect. As noted above in reference to the Supreme Court's decision in *Yellow Cab*, an antitrust case regarding passenger transport, this Court's decision

in *Rittmann* relied on antitrust decisions that issued after enactment of the FAA in order to interpret the Section 1 exemption. *See* p. 6, *supra*.

Moore v. New York Cotton Exchange, 270 U.S. 593 (1926), a case about the Sherman Act that was decided only a year after enactment of the FAA, is typical (and fully consistent with *Yellow Cab*'s analysis). *Moore* involved a cotton exchange organization whose members engaged in business only within New York, but whose cotton came from a port that received its shipments from out of state. *Id*. at 603-04. The Supreme Court ruled that the cotton exchange was a "purely local" business, in which agreements for purchasing and delivering "do not provide for, nor does it appear that they contemplate, the shipment of cotton from one state to another." *Id*. at 604. The Court explained that, "[i]f interstate shipments are actually made, it is not because of any contractual obligation to that effect; but it is a chance happening which cannot have the effect of converting these purely local agreements or the transactions to which they relate into subjects of interstate commerce." *Id*.; *see id*. (stating that it is "not enough" that the cotton "agreements are likely to give rise to interstate shipments"). Put another way, the Court concluded that, while the cotton exchange may have had *involvement* with interstate commerce, the exchange was not itself *engaged* in interstate commerce. *See* Uber Br. 24 (citing *Circuit City* and explaining the distinction between

involvement in and engagement in interstate commerce); *see also, e.g.*, *Lipson v. Socony Vacuum Corp.*, 87 F.2d 265, 267 (1st Cir. 1937).

The same is true of rideshare drivers. They are engaged in a "purely local" business, and neither they nor the rideshare platforms that they use have any "contractual" relationship, *Moore*, 270 U.S. at 603-04, with airlines or other carriers that may have taken or be planning to take rideshare passengers on an interstate journey.

4. *FLSA decisions*

Finally, at least one (erroneously decided) district court decision that plaintiffs cite and discuss in their brief, *see* Plaintiffs' Br. 57-58, 60, relied heavily on case law interpreting the Fair Labor Standards Act ("FLSA"), which was enacted in 1938, as a guide to interpreting the Section 1 exemption. *See Cunningham v. Lyft, Inc.*, 2020 WL 1503220, at *7 (D. Mass. Mar. 27, 2020) (citing *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 568 (1943)), *appeal pending* (1st Cir. No. 20-1373).[8] To the extent that FLSA authority is relevant here, *see* Uber Br. 30 n.3, that authority also supports Uber's argument that local

[8] When enacted, the FLSA extended protections to employees "engaged in commerce or in the production of goods for commerce." Fair Labor Standards Act of 1938, 52 Stat. 1060, 1062-63, §§ 6(a), 7(a). That language has never been amended. *See* 29 U.S.C. §§ 206(a), 207(a).

transportation provided by rideshare drivers is not part of the flow of interstate commerce because it is not part of any coordinated, integrated interstate journey.

In *Walling*, the Supreme Court considered whether goods that came to a warehouse that received interstate shipments remained in the "practical continuity of [interstate] movement" when employees at the warehouse processed the goods and then shipped them solely within the state where the warehouse was located. *Walling*, 317 U.S. at 568. The Court ruled that goods that came to the warehouse from out of state "pursuant to a pre-existing contract or understanding with [a] customer" within the state, *id*., were part of continuous interstate movement: from the beginning of their journey until they arrived in the hands of the customer after passing through the warehouse, they were intended for a particular customer in a particular place and "remain[ed] in commerce until they reach[ed that] point." *Id*. (citation omitted).

Walling treated differently goods ordered by the warehouse from out of state without any "prior order, contract, or understanding" with any customer. 317 U.S. at 569. When those goods were shipped from the warehouse to customers in state, the Court found no reason to believe that the goods were any more a part of a continuous journey from out of state than any other goods "held by a local merchant for local disposition." *Id*. at 570; *see Higgins v. Carr Bros. Co*., 317 U.S. 572, 573-74 (1943) (holding in a companion case decided the same day as *Walling*

that goods from out of state without any pre-determined intrastate leg did not remain in the flow of commerce).

Thus, *Walling* reflects the same distinction set forth in the other cases discussed above—and under *Walling*, as under those cases, drivers using a rideshare platform do not engage in interstate commerce when giving rides to and from an airport. When a passenger arrives at an airport from out of state, there is no "pre-existing contract or understanding" with a rideshare driver dictating where or how she will travel once she arrives at the airport—and neither the rideshare driver nor the rideshare platform has anything to do with determining her ultimate destination. *Walling*, 317 U.S. at 568. Similarly, when a rider uses the Uber or Lyft platform to get a ride to the airport, neither the rideshare platform nor the driver has any connection to or control over the next stage of her trip, which may well not involve any interstate journey. And even if the rider is contemplating an interstate trip at that time, under the rule applied in *Walling*, that contemplation is "not enough." *Moore*, 270 U.S. at 604.

II. THE "CLASS" OF RIDESHARE DRIVERS IS NOT ENGAGED IN INTERSTATE COMMERCE ON THE GROUND THAT A TINY PERCENTAGE OF RIDESHARE RIDES HAPPEN TO CROSS STATE LINES BECAUSE THOSE RIDES FORTUITOUSLY ORIGINATE NEAR A STATE BORDER

As Uber explains, "only a vanishingly small proportion" of rideshare trips "ever cross state lines." Uber Br. 28. Moreover, that small amount of line-

crossing occurs only "by happenstance of geography," and it is merely incidental to drivers' "inherently local" work of providing transportation over short distances. *Id.* at 28-31. That tiny amount of interstate travel is not sufficient to render the whole "class of workers" at issue here, 9 U.S.C. § 1—that is, rideshare drivers across the United States, *see* Uber Br. 19-23—"engaged in . . . interstate commerce" within the meaning of Section 1.

For a "class" to be said to be engaged in a certain activity, that activity must be a characteristic common to the members of the class, not something that only a subset of the class does on an *incidental* basis. *See Wallace*, 2020 WL 4463062, at *3 (plaintiffs alleging they fall under Section 1 must "demonstrate that the interstate movement of goods is a central part of the job description of the class of workers to which they belong"). For instance, nobody would say that rideshare drivers are a class of workers who are engaged in driving orange cars; some drivers certainly do so, but that is not a characteristic that the class widely shares. It cannot be enough to meet that requirement that only a handful of the cars that class members drive are orange ones. Those *members* are certainly "engaged in" driving that kind of car, but the "class" itself is not. So, too, here. The class of rideshare drivers is not "engaged in" taking passengers across state lines, even if some members of the class occasionally do so.

III. EXEMPTING RIDESHARE DRIVERS FROM THE FAA'S COVERAGE UNDER SECTION 1 IS INCONSISTENT WITH CONGRESS'S PURPOSES IN ENACTING THE STATUTE

The conclusion that rideshare drivers are not engaged in interstate commerce, and thus are not exempt from the FAA under Section 1, is consistent not only with the text of the statute but also with its purposes. Congress intended Section 1 to exempt from arbitration classes of workers as to whom a dispute over contracts of employment could have highly problematic effects on interstate commerce—precisely because those workers are so directly "engaged" in carrying out that activity—and for whom special dispute-resolution schemes existed or might be envisioned. *See, e.g.*, *Vargas v. Delivery Outsourcing*, LLC, 2016 WL 946112, at *3 (N.D. Cal. Mar. 14, 2016) ("Section 1's exemption was intended to reach workers who would, by virtue of a strike, 'interrupt the free flow of goods to third parties in the same way that a seamen's strike or railroad employee's strike would.'" (citation omitted)). For instance, railroads "totally dominate[d]" the country's interstate-transportation system at the time of the FAA's passage. *Baker v. United Transp. Union, AFL-CIO*, 455 F.2d 149, 153-54 (3d Cir. 1971). Labor disputes involving railroad workers thus "typically present[ed] problems of national magnitude," because they "paralyze[d] transportation in an entire section of the United States." *Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 381 (1969); *Bhd. of Ry. & S.S. Clerks, Freight Handlers, Exp. & Station*

Emp., AFL-CIO v. Fla. E. Coast Ry. Co., 384 U.S. 238, 245 (1966). Congress therefore "deem[ed] it of the highest public interest to prevent the interruption of interstate commerce by labor disputes and strikes" in the railroad industry. *Pa. R. Co. v. U.S. R.R. Labor Bd.*, 261 U.S. 72, 79 (1923).

To deal with the possibility of employment disputes stopping up the channels of interstate commerce, Congress had at the time of the FAA's passage already enacted special legislation governing resolution of labor disputes involving railroad employees and seamen. *See Circuit City*, 532 U.S. at 121. At the time of enacting the FAA, Congress also envisioned enacting other "statutory dispute resolution schemes covering specific workers"—as it later did with respect to airlines. *Id.*; *see New Prime, Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019). As the Supreme Court has explained, the Section 1 exemption thus ensures that application of the FAA did not "unsettl[e]" such "established or developing statutory dispute resolution schemes." *Circuit City*, 532 U.S. at 121.

A strike among rideshare drivers would hardly "paralyze" interstate transport in the same way that a strike by seamen or railroad workers would have done in 1925. *Bhd. of R.R. Trainmen*, 394 U.S. at 381. Moreover, there was no special dispute-resolution legislation applicable to rideshare drivers (or to taxi drivers) at the time of the FAA's enactment. *See Circuit City*, 532 U.S. at 121; *see, e.g.*, *Heller v. Rasier, LLC*, 2020 WL 413243, at *8 (C.D. Cal. Jan. 7, 2020); *Grice*

v. Uber Technologies, Inc., 2020 WL 497487, at *8 (C.D. Cal. Jan. 7, 2020); *see also Kowalewski v. Samandarov*, 590 F. Supp. 2d 477, 485 (S.D.N.Y. 2008) (Sullivan, J.) (Section 1 does not exempt workers in the "Black Car industry").

In short, the purpose of the Section 1 exemption cuts strongly against application of the exemption to rideshare drivers like plaintiffs here. Because inclusion of rideshare drivers within the scope of the Section 1 exemption would not guard against paralysis of interstate commerce or protect an alternative federal dispute-resolution scheme, it is impossible to understand why Congress would want to exclude rideshare drivers from the FAA's otherwise sweeping coverage. Given the FAA's overarching and "emphatic federal policy in favor of arbitral dispute resolution," *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012), and the narrow construction that must be afforded to Section 1, *see* Uber Br. 24-25, this Court should reject the argument that rideshare drivers are exempt from the coverage of the FAA.

CONCLUSION

For the foregoing reasons and those set forth in Uber's brief, this Court should hold that rideshare drivers like plaintiffs are not within a class of workers that is covered by the Section 1 exemption.

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