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CLIENT ALERT

Providing Kneaded Clarity: Supreme Court Addresses the FAA's Transportation Worker Carve-Out in *Flowers Foods*

June 2, 2026

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Introduction

On May 28, 2026, the Supreme Court issued its decision in *Flowers Foods, Inc. v. Brock*, No. 24-935, addressing the scope of the Federal Arbitration Act's ("FAA") exemption to compelled arbitration for "contracts of employment" of workers "engaged in interstate commerce." In a unanimous opinion by Justice Gorsuch, the Court held that workers transporting goods to and from intrastate destinations may fall within the exemption even when they never personally cross state lines or interact with vehicles that do.[1]

The Court rejected the employer petitioner's proposed bright-line rule that only workers who either cross state borders or load/unload vehicles that do are "engaged in interstate commerce" for purposes of § 1. Instead, the Court reaffirmed that eligible plaintiffs for § 1's exemption from mandatory arbitration are those whose work plays a

[1] The exemption in 9 U.S.C. § 1 reads: "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." https://www.law.cornell.edu/uscode/text/9/1.

"direct," "necessary," and "active" role in moving goods across state borders—even when such work occurs entirely within a single state.[2] This ruling continues the Court's trend of constructing the § 1 exemption in a text-focused but not narrowly cabined manner, and has significant implications for companies reliant on intrastate distributors, delivery drivers, and other forms of last-leg transportation workers.[3]

The Case

Petitioner Flowers Foods, Inc. is "one of the Nation's largest producers of packaged baked goods," including Butterscotch Krimpets, Jumbo Honey Buns, and Wonder Bread.[4] From its bakeries in 19 states, Flowers distributes its products across the country. As a part of its distribution model, Flowers sells rights to distribute its products in specific territories to franchisees.

Respondent Angelo Brock is one such franchisee serving the Denver area. As an intrastate distributor, Brock picks up Flowers products from a Colorado warehouse and delivers them to local stores within Colorado. In 2022, Brock sued Flowers in federal district court, alleging underpayment under federal and state law. Flowers moved to compel arbitration based on a distribution agreement in which Brock agreed to arbitrate disputes, invoking the FAA's general rule that courts must enforce private arbitration agreements. The district court denied the motion, and the Tenth Circuit affirmed. Relying on § 1, the court of appeals held that Brock belonged to a class of workers engaged in interstate commerce and that the district court lacked authority under the FAA to compel arbitration.[5]

Flowers petitioned the Supreme Court for review of a single and narrow question: whether a worker can ever qualify under § 1's "engaged in interstate commerce" language if the worker never crosses a state border and never interacts with vehicles that do. The Court granted certiorari and affirmed the Tenth Circuit's judgment.

Key Takeaways

I. **Intrastate transport may qualify for the § 1 exemption**. A worker who transports goods on the intrastate leg of a larger interstate journey "[a]t least sometimes" can be "engaged in interstate commerce" under § 1, even if the worker never leaves the state and never interacts with a vehicle that has crossed state lines.[6]

II. **Focus remains on "direct," "necessary," and "active" participation in interstate flows of goods**. Consistent with prior decisions, the Court reaffirmed that § 1 applies only to transportation workers whose

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2 *Flowers Foods, Inc. v. Brock*, 608 U.S. ___ (2026), at 7 (quoting *Southwest Airlines Co. v. Saxon,* 596 U.S. 450 (2022)).

3 *Id.* at 3; *see New Prime Inc. v. Oliveira*, 586 U.S. 105 (2019) (interpreting "contracts of employment" to include independent contractors); *Southwest Airlines Co. v. Saxon*, 596 U.S. 450 (2022) (holding that airline workers loading and unloading cargo are involved in interstate commerce); *Bissonnette v. LePage Bakeries Park St.*, LLC, 601 U.S. 246, 249 (2024) (holding that to qualify for the §1 exemption, employees need not be employed by employers in the transportation industry, so long as their work "play[s] a direct and necessary role in the free flow of goods across boarders").

4 *Id.* at 1.

5 *Brock v. Flowers Foods*, No. 23-1182 (10th Cir. 2024), at 29-31.

6 *Flowers Foods, Inc. v. Brock*, 608 U.S. ___ (2026), at 3.

work plays a "direct," "necessary," and "active" role in moving goods across state borders—though that role may occur entirely within a single state.[7]

III. **The relevance of corporate structure and commercial arrangements remain open questions**. The Court noted but did not resolve whether factors such as use of an independently operated distribution company and a distributor's purchase and resale of goods (including taking title) affect whether there is a "contract of employment" or whether the worker is "engaged in" interstate commerce.[8]

IV. **Arbitration clauses for certain transportation workers are at heightened risk**. Companies that distribute goods produced out of state through local franchisees, distributors, or delivery workers—even if those workers operate solely intrastate—may face increased challenges to enforcing arbitration agreements under the FAA.

The Court's Reasoning

The Court grounded its analysis in the ordinary meanings of the statutory terms when the FAA was enacted in 1925, concluding that:

I. "Engaged" meant to "take part in," to be "employed" in, or to be "involved" in a given activity;[9] and,

II. "Interstate commerce" meant transportation of persons or property "between or among" states, including transportation "from or between points in one state and points in another."[10]

The Court emphasized that nothing in these terms requires a worker to personally cross state lines or physically engage with an interstate vehicle. Importantly, the historical definitions recognized that a "continuous carriage" may begin in one state and end in another even though "much of the journey" occurs within a single state.[11] From this, the Court concluded that an individual may "take part," be "employed," or be "involved" in a continuous interstate journey without ever leaving one state or touching vehicles that do.

The Court also drew on several pre-FAA cases that used language substantially similar to § 1's "engaged in . . . interstate commerce" formulation. Because § 1 had not yet been enacted, these cases arose under the Commerce Clause of the United States Constitution.[12] Although the Court was clear not to "suggest that the scope of § 1 is conterminous with the scope of the Commerce Clause as it was interpreted at the time of the FAA's adoption in

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7 See *supra note* 3.

8 *Flowers Foods, Inc. v. Brock*, 608 U.S. ___ (2026), at 7-8.

9 *Id*. at 4

10 *Id.*

11 *Id.* at 4.

12 U.S. Const. art. I, § 8, cl. 3; *see Flowers Foods, Inc.*, slip op. at 5-6 (discussing *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1871); *Rearick v. Pennsylvania*, 203 U.S. 507 (1906); *Rhodes v. Iowa*, 170 U.S. 412 (1898); and *Norfolk & W. Ry. Co. v. Pennsylvania*, 136 U.S. 114 (1890)).

1925," the Court found that these cases "offer probative evidence of what an ordinary person" at that time "would have understood [the statute's] terms to mean."[13]

Forward-Looking Implications

Flowers Foods underscores a notable fault line in the Court's arbitration jurisprudence. While the Supreme Court has consistently and strongly favored arbitration over the past 40 years, particularly in the class action context, it has consistently ruled against arbitration in cases involving the transportation worker exception under § 1.

While *Flowers Foods* arose in the context of packaged-goods distribution rather than the gig economy, the decision is part of the Court's broader pattern of ruling against arbitration in the transportation worker context, which significantly impacts gig economy companies. Companies that rely on independent contractors or gig workers to provide delivery or transportation services should expect plaintiffs to invoke *Flowers Foods* and its predecessors as further authority that such workers fall within § 1's exemption and cannot be compelled to arbitrate under the FAA.

Flowers Foods confirms that the § 1 exemption of the FAA can reach workers whose day-to-day routes never extend beyond state borders, so long as their work forms a "direct," "necessary," and "active" part of moving goods in continuous interstate commerce. However, the Court declined to address several arguments Flowers raised in passing but did not squarely present, leaving open important questions about how to apply § 1 to complex distribution and franchise arrangements, including:

I. when a contract between business entities qualifies as a "contract of employment";

II. how changes in title, ownership, or destinations along the distribution chain affect whether transportation remains "interstate"; and

III. how to distinguish covered transportation workers from noncovered local couriers or vendors whose activities are more attenuated from the interstate flows of goods.

As a result, employers whose operations depend on intrastate distribution of goods produced out of state—particularly in franchise, independent contractor, or distributor structures—should expect continued litigation over the applicability of the FAA's § 1 exemption and may wish to reassess both contract structures and dispute-resolution provisions in light of this decision.

Flowers Foods limits the applicability of arbitration clauses under the Federal Arbitration Act; it does not necessarily preclude enforcement of arbitration agreements under state law.[14] Companies whose arbitration provisions may be vulnerable after *Flowers Foods* should evaluate whether to update their agreements to invoke state arbitration law as an alternative or supplemental ground for enforcement.

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13 *Flowers Foods, Inc.*, slip op. at 7.

14 *Cf. Volt Information Sciences, Inc. v. Board of Trustees*, 489 U.S. 468, 477 (1989).

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