

# SUPREME COURT OF THE UNITED STATES

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IN THE SUPREME COURT OF THE UNITED STATES

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NEW PRIME INC., )  
                  Petitioner, )  
                  v. ) No. 17-340  
DOMINIC OLIVEIRA, )  
                  Respondent. )  
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Pages: 1 through 53  
Place: Washington, D.C.  
Date: October 3, 2018

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## HERITAGE REPORTING CORPORATION

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1 P R O C E E D I N G S

2 (11:09 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear  
4 argument next in Case 17-340, New Prime versus  
5 Oliveira.

6 Mr. Boutrous.

7 ORAL ARGUMENT OF THEODORE J. BOUTROUS, JR.

8 ON BEHALF OF THE PETITIONER

9 MR. BOUTROUS: Mr. Chief Justice, and  
10 may it please the Court:

11 The First Circuit held that  
12 independent contractor agreements are contracts  
13 of employment and, therefore, they were exempt  
14 from the Federal Arbitration Act. This reading  
15 of Section 1's exemption is contrary to the  
16 plain meaning of the statute and its structure,  
17 purpose, history, and context.

18 This Court, for many years going back  
19 to before when the Federal Arbitration Act was  
20 enacted, has said over and over again that if  
21 Congress uses words like "employment" or  
22 "employee" or "employer" in a statute without  
23 further helpful definition, it intends for the  
24 common law agency rules to govern that govern  
25 an employer and employee relationship.

1           In the Section 1 exemption, Congress  
2 did not define or suggest it was coming up with  
3 a new, creative interpretation of the word  
4 "employment" or "employees," which was also  
5 used in that clause. The First Circuit's  
6 decision --

7           JUSTICE SOTOMAYOR: How about the word  
8 "work" -- "worker" in the very clause? Shall  
9 apply to contracts of employment of seamen,  
10 railroad employees, or any other class of  
11 workers engaged in foreign or interstate  
12 commerce.

13           Congress didn't use the word  
14 "employees" if it meant employees. It used a  
15 much broader term, "workers."

16           MR. BOUTROUS: But it --

17           JUSTICE SOTOMAYOR: Shouldn't that  
18 inform what it meant by "contract of  
19 employment"?

20           MR. BOUTROUS: I think it does, Your  
21 Honor. A contract of employment of a worker.  
22 So, if the worker had a different type of  
23 contract, a contract that's an independent  
24 contractor agreement, it would fall squarely  
25 outside the statute.

1 JUSTICE SOTOMAYOR: No. But it said  
2 it shall apply to any other class of workers,  
3 not employees. It used a much broader term.

4 MR. BOUTROUS: It's -- Your Honor,  
5 it's a residual clause that follows contracts  
6 of employment of any other class of worker.

7 JUSTICE SOTOMAYOR: But what we're  
8 trying to decide is what employment --  
9 "contract of employment" means. And if it  
10 meant only employees, Congress naturally, I  
11 would assume, would have used the word "any  
12 other class of employees," but instead it chose  
13 a much broader word, "workers."

14 MR. BOUTROUS: Well, Your Honor, I  
15 think, as we have -- have argued, the fact that  
16 the railway -- railroad employees is also -- is  
17 mentioned right before that, seamen, which are  
18 traditionally common law master-servant  
19 employees, demonstrates the --

20 JUSTICE SOTOMAYOR: Well, except your  
21 adversary has pointed out that under the Seamen  
22 Act, it covered people who were not contracts  
23 of -- seamen are not just people who are  
24 employees; it also is the tugboat operator  
25 who's on the boat guiding it. It's other

1 people who are not simply employees.

2 MR. BOUTROUS: But Congress, just five  
3 years earlier in the Jones Act, defined seamen  
4 under the Jones Act as actions in the course of  
5 their employment, and as employees, this  
6 Court's Chandris decision also uses the common  
7 law definition of substantial connection.

8 JUSTICE GINSBURG: What -- what do you  
9 make of the other side that says in the seamen  
10 category, the -- the ship's surgeon, the pilot  
11 qualify as seamen who are outside the Federal  
12 Arbitration Act, even though they're  
13 independent contractors, not common law  
14 employees?

15 MR. BOUTROUS: Justice Ginsburg, I  
16 think the -- the physician example is a good  
17 one. The case that has been cited by the  
18 Respondent didn't involve a question of  
19 independent contractor or anything like that.  
20 It was -- the question was could the captain,  
21 basically, override the Hippocratic oath in  
22 terms of the physician exercising his  
23 independent judgment.

24 And I don't think the Court has to  
25 determine whether every seaman and is -- is an

1 employee or not. The question is whether they  
2 had a contract of employment.

3 And under this Court's decision in  
4 Circuit City, the Court emphasized that the  
5 exemption to the Federal Arbitration Act for  
6 contracts of employment should be given a  
7 narrow construction and a precise reading in  
8 order to further the pro-arbitration policies  
9 of the Federal Arbitration Act.

10 JUSTICE GINSBURG: More narrow in the  
11 sense that it was limited to transportation  
12 workers?

13 MR. BOUTROUS: In -- in that case,  
14 yes, Your Honor, that was -- that was the  
15 issue. But the overall thrust, if -- on page  
16 120 to 121 of Circuit City, the Court in  
17 talking about seamen, railroad employees, air  
18 carrier -- the air carrier employees who were  
19 added to the Railway Labor Act in 1935, I  
20 believe, this Court said over and over again  
21 these were employment relationships, talking  
22 about the relationship between employees and  
23 employers. So this Court in Circuit City was  
24 clearly contemplating exactly what the statute  
25 says, that a contract of employment is a



1 contract of employment. It's not an  
2 independent contractor agreement.

3 CHIEF JUSTICE ROBERTS: Well, you keep  
4 in your brief -- and the other side raises this  
5 concern -- you -- you quickly shift the  
6 discussion of -- of contracts of employment to  
7 whether or not there's an employee/employer  
8 relationship.

9 And simply because someone would be  
10 considered or not considered an employee  
11 doesn't necessarily answer the question of  
12 whether it's a contract of employment. People  
13 think naturally of employing an independent  
14 contractor.

15 So I don't know why -- the question is  
16 not employee/employer. It's employment. And  
17 employment in -- in many of these contexts has  
18 a broader scope than the existence of an  
19 employee/employer relationship.

20 MR. BOUTROUS: It's absolutely true,  
21 Your Honor, there are many different  
22 definitions of employment out there, but as I  
23 said, the Court's decision in National Mutual  
24 Insurance Company versus Darden, which we've  
25 cited, and in the Community -- Community for

1 Creative Non-violence versus Reid case, which  
2 Darden cites, says that Congress -- we're going  
3 to assume that when Congress uses "employee" in  
4 Darden but in Reid the Court used "employment"  
5 and said when those terms are used by Congress,  
6 we -- we -- we assume Congress intended for the  
7 ordinary terms to be used.

8 And here --

9 JUSTICE SOTOMAYOR: Except the problem  
10 is that we don't really assume that because the  
11 other side has prevented us -- presented us  
12 with multiple cases, many of them in which  
13 we've used "contract of employment" to mean  
14 employees and independent contractors.

15 It's all contextual, isn't it?

16 MR. BOUTROUS: Not really, Your Honor.  
17 Most of the cases, the vast -- I'll give them  
18 this: They did a -- they did a good job of  
19 cataloguing haphazard, in passing, uses of  
20 "contract of employment" where it wasn't an  
21 issue. So, in describing a case about an  
22 attorney and a client, a court years ago called  
23 it a contract of employment.

24 JUSTICE GORSUCH: Well, what do we do  
25 about the fact that, less haphazardly, your --

1 your colleague on the other side has documented  
2 that back in 1925, which is when the statute  
3 was enacted, and I think you'd agree that we  
4 have to interpret it as a reasonable reader  
5 would have at that time, didn't necessarily  
6 distinguish between independent contractors and  
7 employees with the degree of care that the law  
8 has subsequently come to use.

9           And maybe even that your own client  
10 doesn't use. According to its website, it  
11 speaks of employing, I believe -- I can't  
12 remember the exact variation of the word -- but  
13 it treats these independent contractors as  
14 employing them.

15           So what do we -- what do we do about  
16 the fact that that is at least an available  
17 reading still today and that there's a lot of  
18 historical evidence at the time of the statute  
19 in question that "contract of employment" may  
20 have swept more broadly?

21           MR. BOUTROUS: A couple things,  
22 Justice Gorsuch. First, I don't agree with  
23 Respondent that -- that the independent  
24 contractor/contract of employment distinction  
25 was not well established.

1           It was deeply embedded. This Court's  
2 decision in the Coppage case, which we cite in  
3 our reply brief, specifically, rhetorically  
4 acts as if everyone would know about this  
5 distinction. We cited the Conyngton treatise  
6 from 1920. It had an entire chapter called  
7 Contracts of Employment, and it made the  
8 explicit distinction -- and this Court has over  
9 the years cited Mr. Conyngton in its cases --  
10 that contracts of employment were different  
11 than independent contractor agreements.

12           JUSTICE SOTOMAYOR: But other  
13 treatises didn't?

14           MR. BOUTROUS: We cited another  
15 treatise, Your Honor.

16           JUSTICE SOTOMAYOR: But other --  
17 you're not -- you're not denying other  
18 treatises -- other treatises didn't treat them  
19 differently?

20           MR. BOUTROUS: Well, they didn't  
21 really -- to the extent they addressed the  
22 issue, the distinction was well established,  
23 Your Honor. Again, Respondent has cited a lot  
24 of authorities where it just wasn't a  
25 discussion or an issue.

1           In the -- the need for a narrow  
2 construction of Section 1 in order to further  
3 the pro-arbitration policies of the Act, plus  
4 the presumption that Congress meant what it  
5 said when it said employment, that means even  
6 if we come to a draw or even if they come up  
7 with some other authorities, the background  
8 presumption is that Congress meant contract of  
9 employment.

10           And I think it's also important that  
11 it's been nearly 100 years, and no court had  
12 ever decided that the words "contracts of  
13 employment," which are pretty clear, mean  
14 something completely different.

15           The First Circuit and Mr. Oliveira  
16 contend that those words mean agreement to  
17 work. But if Congress, Justice Sotomayor, had  
18 wanted to say agreement to work, it could have  
19 said that. It said contracts of employment.

20           So I think it's just very clear from  
21 the language of the statute that Congress  
22 intended traditional employment agreements to  
23 be the subject of the exemption. Clearly --

24           JUSTICE SOTOMAYOR: Can you address  
25 the gateway question? Who decides this?

1                   MR. BOUTROUS: Your Honor, we believe  
2 that the Court's cases like Rent-A-Center and  
3 First Options and that talk about whether you  
4 have a valid delegation clause, in the first  
5 instance, the issue goes to the arbitrator  
6 because the parties agree to -- to arbitrate  
7 issues concerning what's arbitrable. And  
8 that's what this is.

9                   We -- we admit, we concede, that it's  
10 a bit different than some of the Court's cases,  
11 so the -- the Kindred Nurseries case that --  
12 that ruled -- where the Court ruled that the  
13 Federal Arbitration Act did apply to a  
14 contract, one that there was a dispute about  
15 formation, and the party there had argued that  
16 because there was a dispute as to whether an --  
17 an agreement was formed, the FAA hadn't been  
18 triggered. But --

19                   JUSTICE GINSBURG: But if Section 1  
20 puts an entire category, even if you say it's a  
21 narrow category, outside the arbitration act  
22 entirely, it's exempt from the Federal  
23 Arbitration Act, then how can you use the  
24 arbitration act? The delegation clause would  
25 never come into play because agreements that

1 fit the description, contracts of employment,  
2 they're outside the Federal Arbitration Act.  
3 That can't -- you can't use the Act to enforce  
4 any arbitration.

5 MR. BOUTROUS: Yes, Your Honor, that  
6 -- that's Respondent's argument. And -- and I  
7 recognize it is a bit different than Kindred  
8 Nurseries, but it's -- it's very similar in the  
9 sense that the party there was arguing the  
10 Federal Arbitration Act isn't triggered because  
11 the agreement's invalid from the get-go.

12 But the main point I would like to  
13 make on this issue about delegation is we trust  
14 courts too. Our main concern about what the  
15 district court did originally was to -- to rule  
16 that correct -- first ruled correctly that  
17 contracts of -- this was not a contract of  
18 employment, so the -- the -- that issue needed  
19 to be looked at.

20 And -- but then the court said there  
21 would be discovery and then a trial to  
22 determine whether the exemption applied. And  
23 we respectfully submit that the -- if a -- if a  
24 court -- whoever decides this, an arbitrator or  
25 a court, it should be done based on the four

1 corners of the contract and based on what the  
2 -- whether it's a contract of employment or an  
3 independent contractor agreement.

4 JUSTICE GINSBURG: I thought the --  
5 the trial handler was supposed to determine  
6 whether this was an independent contractor and,  
7 therefore, outside the Section 1 exemption?

8 MR. BOUTROUS: Exactly, Your Honor.  
9 And -- and our point is that's the really  
10 merits of the case. The -- Mr. Oliveira's  
11 argument is -- is that in -- in actual fact, he  
12 was -- he was an employee in the way the  
13 relationship in practice functioned.

14 So that's the merits. So, if we're  
15 required to have a trial in federal district  
16 court about that issue, and -- and if New Prime  
17 prevails and it's determined that he's actually  
18 an independent contractor, the right to  
19 arbitrate that issue would have basically been  
20 defeated.

21 JUSTICE GORSUCH: Mr. Boutrous, you --  
22 you moved nicely to the merits, but just so we  
23 haven't ignored where we've moved so quickly in  
24 response to Justice Ginsburg's question, and I  
25 share the same concern, so perhaps you can help



1 me.

2 Before a court can do anything, issue  
3 an order under Section 4 compelling  
4 arbitration, that's what you want, is an order  
5 from the district court compelling arbitration,  
6 I would have thought it would have had to  
7 satisfy itself that it had the power to issue  
8 such an order.

9 And Section 1 has this carve-out. And  
10 why isn't it more like a challenge to the  
11 delegation provision itself if you want to use  
12 Rent-A-Center as your authority, I believe you  
13 do, rather than a challenge to the underlying  
14 contract? If we're going to make an analogy, I  
15 would have thought the analogy would have  
16 worked the other way. Help me.

17 MR. BOUTROUS: I -- I -- I think, Your  
18 Honor, I have to say that is another analogy.  
19 And it's -- and it's one that -- it's another  
20 way the Court could go.

21 But, here, the -- the presumption's  
22 kind of been flipped on us. We have an  
23 agreement that was in commerce. Everyone  
24 agrees with that. It's not a contract of  
25 employment. It's an independent contractor

1 agreement.

2 On the face of the Federal Arbitration  
3 Act, the district court had jurisdiction. The  
4 plaintiff -- Mr. Oliveira is asking for an  
5 exception. We agreed that if we had a dispute  
6 over an issue, any issue arising from the  
7 agreement, it would go to an arbitrator.

8 And so it's not a question of  
9 jurisdiction. The federal district court, I  
10 think, had the power, inherent power, to stay  
11 or specifically -- order specific performance  
12 of an agreement, aside from the Federal  
13 Arbitration Act. But I do recognize that we're  
14 asking on that issue for the Court to take  
15 another step.

16 And pivoting back to the merits, on  
17 that point, it's the Respondent who's asking  
18 for an upheaval. Basically, they argue that  
19 every word in the exemption is a surprise word.  
20 Contract means agreement. Employment means  
21 work or business of any kind. Seamen means  
22 everything.

23 And in the Wisconsin Central case from  
24 last term, where the question was what does  
25 "money" mean, the Court said the government had

1 made a decent case that "money" could be  
2 interpreted more broadly. But that wasn't the  
3 ordinary usage.

4 And the Court said: Does money -- is  
5 it really ordinary to say money means  
6 everything? Here, the -- Mr. Oliveira is  
7 basically arguing that "contract of employment"  
8 means every type of work arranged --

9 CHIEF JUSTICE ROBERTS: Well, but just  
10 so you -- saying that the arbitrator will  
11 decide arbitrability, there are different  
12 degrees of arbitrability. It's one thing to  
13 say, for example, if you have an agreement,  
14 we'll arbitrate all disputes on the plant  
15 floor. And then, you know, the company builds  
16 another extension of it and the question is  
17 whether it applies there. That's sort of  
18 within the four corners of the arbitration  
19 agreement.

20 But if the issue is does the Act apply  
21 at all, that seems to be on a different order  
22 of magnitude. And it seems quite another thing  
23 to say that the arbitrator gets to decide  
24 whether a court can decide -- compel  
25 arbitration at all.

1           MR. BOUTROUS: It is a different  
2 thing, Your Honor. And -- and we -- as I said,  
3 if the -- if the question is whether a district  
4 court would decide this, we'd be happy to have  
5 the federal district court interpret the  
6 contract or this Court could -- could do it.

7           The contract is an independent  
8 contractor agreement on its face. So -- so I  
9 -- I do think it is a different inquiry. We --  
10 and this Court has never held that interpreting  
11 that provision is an arbitrability issue that  
12 can be sent up --

13           JUSTICE BREYER: Well, the -- the  
14 reason that it's different is that when you  
15 decide whether parties have agreed to arbitrate  
16 arbitrability, is there an arbitration clause  
17 or not, you're looking to their intent in  
18 contract document. When you decide whether  
19 there are procedural bars to this arbitration,  
20 you're looking to interpret a contract again,  
21 which will have the thing there. All right?

22           Here, we are not doing that. We are  
23 interpreting a statute. And there is no reason  
24 -- well, all right. You see, I mean, it is, it  
25 seems to me, very different.

1           As to the general question, if you  
2 read this just off the bat, you might think  
3 there is a whole category of arbitration called  
4 labor arbitration, and labor arbitration even  
5 in 1925 and before worked pretty well.

6           And so you might have thought that  
7 Congress had in mind we're not talking here  
8 about labor arbitration. We're talking about  
9 business arbitration. And particularly labor  
10 arbitration where we don't have constitutional  
11 authority to act because that's what people  
12 thought in 1925.

13           And so that is not just a dictionary  
14 word. That's saying what they're after is  
15 trying to exclude arguments between employees  
16 not in interstate commerce, et cetera, and  
17 their employers from this statute. The NLRB or  
18 its predecessors or early other methods are  
19 available for labor arbitration.

20           If you take that as a kind of  
21 framework --

22           MR. BOUTROUS: Yes.

23           JUSTICE BREYER: It's hard to do with  
24 Circuit City, I grant you. But still --

25           MR. BOUTROUS: I was about to say

1 that, Your Honor.

2 JUSTICE BREYER: Yeah, yeah, yeah, of  
3 course. But still Circuit City is -- it says  
4 what it says, but it does -- I don't know if we  
5 want to go further than -- than necessary.

6 MR. BOUTROUS: Well, Your Honor, and I  
7 do think if we look at the -- the dissent in  
8 Circuit City, was making the point that this  
9 was about labor statutes. But the labor  
10 statutes apply to employees, and the unions are  
11 bargaining for employees, not for independent  
12 contractors.

13 The labor strife and the labor peace  
14 issues were employees striking and the battles  
15 between the -- the railroads and -- and the --  
16 the unions. But our --

17 JUSTICE GINSBURG: What about the  
18 argument that the independent contractor status  
19 here was a sham, that it was a label rigged to  
20 make this person appear on the face, as you  
21 said, an independent contractor when, in fact,  
22 the -- the -- New Prime calls all the shots,  
23 the -- whether you label this driver an  
24 independent contractor or an employee, he is  
25 subject to New Prime's control as to a lot more

1 than just the result of the work?

2 MR. BOUTROUS: Yeah, Justice  
3 Ginsburg --

4 JUSTICE GINSBURG: That argument, that  
5 this person, this is a -- a phony label and, in  
6 fact, this person is an employee, not an  
7 independent contractor?

8 MR. BOUTROUS: We disagree, obviously,  
9 on the merits. That's the merits question that  
10 would be arbitrated. And if Mr. Oliveira is  
11 correct, he'd be entitled to further relief  
12 under the Fair Labor Standards Act, which is  
13 one of the provisions he's suing under. We --  
14 we disagree with that.

15 And -- and the other point, Justice  
16 Ginsburg, is that, here, it's undisputed that  
17 Mr. Oliveira had the choice, the free -- at his  
18 choice could -- to be either an independent  
19 contractor or an employee.

20 JUSTICE GINSBURG: But he was told  
21 it's your -- he was -- he was told by New  
22 Prime's representative, you could be one or the  
23 other, but it's to your benefit if you elect  
24 the independent contractor format.

25 MR. BOUTROUS: But -- yes, Your Honor,

1 that's what he alleges. But the -- the --  
2 there's evidence, some of the amicus briefs  
3 talk about this, that independent contractors  
4 make, net out, much more in pay. They have  
5 freedom and flexibility.

6 And it may be that it didn't turn out  
7 well for Mr. Oliveira, and if he's right -- I  
8 want to make this clear. The arbitration  
9 process needs to be fair. And he would have --  
10 Mr. Oliveira and New Prime would put their  
11 cases on to an arbitrator. And if he's right,  
12 he'll prevail. If New Prime's correct, it will  
13 prevail.

14 And these arbitration proceedings can  
15 produce significant awards. Multiple people  
16 will bring the actions. I -- I've seen it  
17 happen with great frequency. There is  
18 effective relief.

19 And so the theory that this is a sham,  
20 that goes to the -- the merits and to the  
21 function and how the relationship was in  
22 practice.

23 JUSTICE SOTOMAYOR: On this --

24 CHIEF JUSTICE ROBERTS: Counsel, did I  
25 understand -- I've been pondering your answer



1 to the question I asked a while ago. Did I  
2 understand you'd be perfectly happy to have a  
3 court decide the arbitrability issue here?

4 MR. BOUTROUS: Your Honor, we -- we  
5 think that the -- the -- that there's a -- as  
6 we've argued, that this falls within  
7 Rent-A-Center, maybe one step beyond, but if  
8 the Court were to rule that independent  
9 contractor agreements are not contracts of  
10 employment, but we need a court, either this  
11 Court or the district court to decide that, as  
12 I said, we trust courts too to make that  
13 determination.

14 CHIEF JUSTICE ROBERTS: Well, I must  
15 have missed it. I thought there was a lot of  
16 fighting over the question of whether a court  
17 or an arbitrator should decide the  
18 arbitrability in this case. I thought that was  
19 the first question presented.

20 MR. BOUTROUS: That -- that is the  
21 first question presented. We stand on it, Your  
22 Honor. I'm not abandoning it. But the -- the  
23 main problem we have with what the district  
24 court ordered, the principal problem, was that  
25 it was going to be a trial on the main issue,

1 in fact, the issue Justice Ginsburg mentioned,  
2 that is this really an independent contractor  
3 agreement; is it a contract of employment?

4 The statute focuses on the contract,  
5 not on the activities. And so the first step  
6 we would respectfully submit, if the Court  
7 rejects our argument about arbitrability, would  
8 be to rule that this goes back to the district  
9 court or this Court rules on -- as a matter of  
10 law based on the contract, and then the case,  
11 if -- if we're correct that it is an  
12 independent contractor agreement, I think it's  
13 -- on the undisputed facts, it is, it has all  
14 the elements, then we go to arbitration and  
15 then we litigate the issue --

16 JUSTICE SOTOMAYOR: Is there any other  
17 area of law where we take the party's label,  
18 "employee" versus "independent contractor," and  
19 give it binding effect? I -- I -- I thought,  
20 for virtually every other purpose in tax law,  
21 labor law -- I -- I just don't know another  
22 area where we take the form of the contract as  
23 dispositive of a legal issue, of whether you're  
24 an employee or an independent contractor?

25 MR. BOUTROUS: Your Honor, I -- I -- I

1 can't think of one. But here we have the  
2 unique circumstance where the statute focuses  
3 on the contracts. And as I think Justice  
4 Breyer is making the point, this was back in  
5 1925 where there was a real sensitivity about  
6 commerce power.

7 And so, here, the statute focuses on  
8 the contracts. And I go back to Darden and  
9 Reid and -- and the 1915 decision that's cited  
10 in those cases, in Robinson, which I think that  
11 tee up --

12 JUSTICE SOTOMAYOR: But that only gets  
13 you as far as letting the arbitrator decide  
14 whether the arbitrability clause controls. I  
15 don't think that gets to the legal  
16 responsibility --

17 MR. BOUTROUS: But -- but, Your Honor,  
18 in --

19 JUSTICE SOTOMAYOR: -- to the merits  
20 question --

21 MR. BOUTROUS: No.

22 JUSTICE SOTOMAYOR: -- whether he was  
23 an employee or an independent contractor  
24 entitled to more pay or not.

25 MR. BOUTROUS: And -- and, Your Honor,

1 I -- I hear what you're saying. I -- we're not  
2 arguing that if you just slapped the label  
3 "independent contractor" on a contract, game  
4 over.

5 The terms of the agreement give  
6 Mr. Oliveira the power to work for others, to  
7 -- to determine how to do the job. It -- it  
8 has all the features of an independent  
9 contractor.

10 JUSTICE SOTOMAYOR: I don't want to  
11 argue the merits. I'm arguing meaning **REWRITE** that  
12 you can argue.

13 MR. BOUTROUS: Yes.

14 JUSTICE SOTOMAYOR: You argued to the  
15 court --

16 MR. BOUTROUS: Yes.

17 JUSTICE SOTOMAYOR: -- and lost on  
18 that, on at least the arbitrability.

19 MR. BOUTROUS: Yes. And there -- and  
20 -- and on that point, Your Honor, in terms of  
21 determining whether it -- it's arbitrable, my  
22 only point was that whether it's the arbitrator  
23 or the court, the inquiry should be, what is  
24 this agreement? Is it a contract of employment  
25 on its face, the four corners of the agreement?

1           If -- if it -- if it is, then it's  
2 exempt from the Act. If it's an independent  
3 contractor agreement, it's subject to the Act.  
4 And then the arbitrator would do, Your Honor,  
5 what you were suggesting: Probe the arguments,  
6 was this a legitimate agreement, what was it,  
7 and is Mr. Oliveira entitled to relief?

8           With that, Mr. Chief Justice, I'd like  
9 to reserve my time. Thank you.

10           CHIEF JUSTICE ROBERTS: Thank you,  
11 counsel.

12           Ms. Bennett.

13           ORAL ARGUMENT OF JENNIFER D. BENNETT  
14           ON BEHALF OF THE RESPONDENT

15           MS. BENNETT: Mr. Chief Justice, and  
16 may it please the Court:

17           It's black-letter law that statutes  
18 are interpreted according to their ordinary,  
19 common meaning, not now but at the time they  
20 were passed. And there's overwhelming evidence  
21 that in 1925, when the Federal Arbitration Act  
22 was passed, the words "contract of employment"  
23 were general category for agreements to perform  
24 work. They included the agreements of common  
25 law servants, as well as independent

1 contractors.

2           Whether you look at statutes, case  
3 law, newspaper articles, even actual contracts  
4 themselves, the result is the same: The vast  
5 majority of sources call independent  
6 contractors' agreements to perform work  
7 "contracts of employment."

8           And perhaps most relevantly, Congress  
9 itself repeatedly used the phrase that way.  
10 Congress passed multiple statutes  
11 contemporaneous with the FAA that all used the  
12 phrase "contracts of employment" to refer to  
13 independent contractors' agreements to perform  
14 work.

15           Prime has said nothing about these  
16 statutes at all. Instead, Prime dismisses the  
17 mountain of sources that use the phrase  
18 "contracts of employment" to refer to  
19 independent contractors' agreements to perform  
20 work as people unthinkingly using the term that  
21 way.

22           But that's, in fact, precisely the  
23 point. Without even thinking about it,  
24 everyone, from this Court to Congress, to  
25 newspaper articles, to ordinary contract

1 drafters themselves, everyone understood the  
2 category "contracts of employment" to include  
3 the agreements of independent contractors, as  
4 well as other workers. That --

5 JUSTICE ALITO: Does the concept of a  
6 -- a contract of employment involving a class  
7 of workers -- and Justice Sotomayor focused on  
8 the term "workers" -- a class of workers  
9 engaged in foreign or interstate commerce,  
10 apply to all independent contractors who are  
11 engaged to perform some type of work?

12 MS. BENNETT: It would apply to all  
13 independent contractors who are engaged in  
14 foreign or interstate commerce. And this --  
15 this Court has said that the class of workers  
16 engaged in foreign or interstate commerce is  
17 quite narrow, actually. It's people who are  
18 directly involved in transporting goods or so  
19 closely associated to it to be assumed to be  
20 essentially directly involved.

21 JUSTICE ALITO: So anybody who's  
22 involved? It doesn't -- there are no  
23 distinctions among the -- the -- the types of  
24 independent contractors who might be covered?

25 MS. BENNETT: No, Your Honor. As long

1 as they're a worker, then -- then anybody is --

2 JUSTICE ALITO: But -- but anybody who  
3 does work is a worker?

4 MS. BENNETT: Correct. That's  
5 correct, Your Honor. And this makes sense if  
6 you look at the historical context and the  
7 statutory context when this exemption was  
8 enacted.

9 So Circuit City says that the  
10 exemption was trying to achieve two goals. The  
11 first goal is Congress was trying to avoid  
12 conflicts with preexisting dispute resolution  
13 statutes. And the preexisting dispute  
14 resolution statutes in force at the time define  
15 their scope functionally in terms of the work  
16 that was performed, not in terms of the  
17 worker's employment status.

18 And so, if the exemption depended on a  
19 worker's employment status, it would create  
20 exactly the kinds of conflicts that Congress  
21 was trying to avoid.

22 So, if you look, in fact, at the  
23 Transportation Act, which was the statute that  
24 governed railroad workers at the time, and if  
25 you look, in fact, at every dispute resolution



1 statute that preceded the Transportation Act,  
2 they all define the phrase "railroad employees"  
3 to mean a worker engaged in the work of the  
4 railroad; that is, they defined it based on the  
5 work that you did, not your technical  
6 employment status.

7 JUSTICE KAGAN: May I -- may I go back  
8 to Justice Alito's question --

9 MS. BENNETT: Sure.

10 JUSTICE KAGAN: -- and just give you a  
11 hypothetical --

12 MS BENNETT: Sure.

13 JUSTICE KAGAN: -- and say whether  
14 your argument includes this too? So suppose  
15 that Amazon contracts with FedEx or UPS to ship  
16 all its products and they want to send their  
17 disputes to arbitration.

18 Does that fall within the Act or does  
19 that fall within this exemption?

20 MS. BENNETT: It would not fall within  
21 the exemption. It would be subject to the FAA.  
22 And the reason for that is because the FAA  
23 requires -- applies -- exempts, rather, a class  
24 of workers engaged in foreign or interstate  
25 commerce, not companies engaged in foreign or

1 interstate commerce. And FedEx isn't --  
2 wouldn't be considered a worker. They would be  
3 considered a company.

4 And I want to return to what Circuit  
5 City said about the goals of this exemption.

6 JUSTICE KAGAN: So -- so --

7 MS. BENNETT: Sorry.

8 JUSTICE KAGAN: -- just give me a  
9 little bit more on that.

10 MS. BENNETT: Sure.

11 JUSTICE KAGAN: In -- in every case,  
12 we have to figure out whether a worker is  
13 involved or a company is involved?

14 MS. BENNETT: That's correct. And in  
15 most cases, that won't be difficult. Here, for  
16 example, that's not a disputed issue. And I've  
17 seen very, very few cases where that is, in  
18 fact, a disputed issue.

19 But it's true that if in the rare case  
20 where it is, the court would have to figure  
21 that out. And that's based on the text of the  
22 FAA. The FAA says we exempt these kinds of  
23 contracts.

24 And so, if there are questions about  
25 whether a contracted issue is the kind of

1 contract that's exempted, then a court has to  
2 figure it out to determine whether the FAA  
3 applies before applying it.

4 And to return to the goals of the Act  
5 expressed in Circuit City, so we have not  
6 conflicting with preexisting statutes, and we  
7 know that those statutes applied functionally.  
8 They applied to people's role in work.

9 And I'll note also on -- on that first  
10 goal, even if we interpret those other statutes  
11 narrowly to apply solely to common law  
12 employees, on Prime's interpretation, the FAA  
13 would still conflict with the -- with those  
14 other statutes, because even if those other  
15 statutes applied only to common law employees,  
16 what Prime is saying is the exemption doesn't  
17 apply to common law employees. It applies to  
18 whatever -- to people whose contracts say they  
19 are common law employees, even if they're not.

20 And so you'd have a whole class of  
21 people, even on Prime's interpretation, that  
22 would be subject both to these alternative --  
23 preexisting alternative dispute resolution  
24 statutes, as well as the FAA. So anybody whose  
25 contract was silent, anybody who was illegally

1 misclassified.

2           And so there would be a conflict even  
3 on Prime's own interpretation of these  
4 statutes. And, again, we know that these  
5 statutes, in fact, were applied functionally.

6           The Historian's brief describes dozens  
7 of cases in which the Transportation Act was  
8 applied to independent contractors or people  
9 working for independent contractors.

10           And -- and the second goal of the  
11 statute, as Circuit City explains, beyond these  
12 specific conflicts, is that Congress was  
13 concerned generally with transportation  
14 workers' role in the free flow of goods. The  
15 FAA was enacted in the wake of years of labor  
16 unrest in the transportation industry that had  
17 repeatedly shut down commerce.

18           And I want to note that this labor  
19 unrest, Prime says that it was only common law  
20 employees of the railroads. That's, in fact,  
21 not true.

22           The Shopmen's Strike, which happened  
23 just before the FAA was passed, was caused in  
24 large part by workers who were not common law  
25 servants of the railroads that they were

1 striking against. And so, given these years of  
2 labor unrest and the havoc that Congress had  
3 seen that people who are not common law  
4 servants could wreak, it makes perfect sense  
5 that Congress would exempt workers based on  
6 their role in the transportation of goods, that  
7 is, their ability to shut down commerce, rather  
8 than their technical employment status that was  
9 listed in their contract.

10 It would make no sense at all for  
11 Congress to treat workers who had the same  
12 ability to disrupt commerce differently simply  
13 because of what their contract said.

14 And I want to note that if we take  
15 Prime's interpretation, that would also lead us  
16 to absurd results in at least two ways. First,  
17 on Prime's interpretation, if a worker's  
18 contract is silent, that is, if it doesn't say  
19 what your employment status is or not, then it  
20 would be impossible to determine whether to  
21 apply the contract at all.

22 And, second, if a contract  
23 misclassified a worker, illegally misclassified  
24 a worker as an independent contractor, then the  
25 FAA, unlike any other federal statute, would

1 depend on that illegal misclassification,  
2 rather than the actual worker's status.

3 And so we have the text of the  
4 statute, the context of the statute, and the  
5 absurd results that would result, all leading  
6 us, pointing us in the same direction.

7 And on -- quickly just on the first  
8 question, I want to note that, I think, as Your  
9 Honors understand, in general, we don't apply  
10 statutes that don't apply. And so, if a court  
11 is going to apply a statute, it has to figure  
12 out first whether it applies.

13 JUSTICE GINSBURG: But what of the --

14 CHIEF JUSTICE ROBERTS: Well, I  
15 understand -- Justice, please.

16 JUSTICE GINSBURG: What of the  
17 Petitioner's argument that, forget about the  
18 FAA, that a court has inherent authority to  
19 stay a proceeding pending utilization of an  
20 alternate dispute resolution mechanism chosen  
21 by the parties?

22 MS. BENNETT: Your Honor, as this  
23 Court has repeatedly explained, courts have a  
24 duty to exercise the jurisdiction that Congress  
25 has granted them. The exceptions to that duty

1 are really under exceptional circumstances.

2 And one of those exceptions could be  
3 an ongoing proceeding, but there is no ongoing  
4 proceeding here. Courts generally don't have  
5 the duty -- the authority to just stay a  
6 proceeding just because they want to or because  
7 there might be some proceeding that happens in  
8 the future.

9 And I'll note that Prime did not ask  
10 the court to use its inherent authority. Prime  
11 solely asked the court to rely on the FAA. And  
12 so the court has to decide whether the FAA  
13 applies to know whether it can grant Prime's  
14 request.

15 CHIEF JUSTICE ROBERTS: Well, I  
16 understand your friend on the other side not to  
17 care about that. Did I --

18 MS. BENNETT: That -- that is how I  
19 understood the argument as well, that's  
20 correct.

21 (Laughter.)

22 MS. BENNETT: And I just want to --  
23 yes?

24 JUSTICE GORSUCH: Well, while we have  
25 you here, you -- you -- in response to Justice

1 Alito and Justice Kagan, you raised a very  
2 interesting point about the difference between  
3 workers and companies.

4 And similar to the kind of question we  
5 have here presented between employees and  
6 independent contractors, there are going to be  
7 fact issues in either circumstance where a  
8 district court's going to have to sort them  
9 out.

10 Courts disagree over how summary those  
11 procedures should be. Let's say we're just in  
12 -- in a world of workers versus companies. How  
13 would you expect the district court to sort  
14 that out?

15 I mean, the FAA is supposed to resolve  
16 these things quickly in a summary fashion.  
17 Section 4 says if there's a dispute over  
18 whether there is a contract to arbitrate, it's  
19 supposed to go to a summary trial, not five  
20 years of discovery and all the glories that  
21 entails that we're familiar -- all painfully  
22 familiar with these days.

23 But how -- how would you advise us to  
24 write that portion of the -- of the opinion?

25 MS. BENNETT: Your Honor, at first



1 blush, you could look at the contract, and it  
2 would only require factual -- any sort of  
3 factual inquiry, if there was a dispute about  
4 it, you know, say the contract was a subterfuge  
5 or the contract doesn't say anything at all.

6           And in the few cases where this has  
7 come up, I believe courts have resolved it  
8 largely on declarations. And very limited  
9 discovery would be needed to determine whether  
10 a person performed the work himself.

11           The question would be did the parties  
12 contemplate that the individual who is suing  
13 performed the work himself -- him or herself,  
14 or did they contemplate that it would be a  
15 company? And so that inquiry would require  
16 very limited discovery, if any at all.

17           JUSTICE GORSUCH: So is it safe to say  
18 that we have at least common ground on one  
19 thing, maybe a few things today, but at least  
20 on this, that the proceedings may not be  
21 limited to the form of the document before us  
22 but should be summary in nature?

23           MS. BENNETT: Yes, I agree with that,  
24 Your Honor. That's correct.

25           JUSTICE ALITO: What do you mean --

1 what do you mean by "a company"?

2 MS. BENNETT: I mean anything that is  
3 not a real person. So, for example, a  
4 corporation would -- would be a company.

5 JUSTICE ALITO: A corporation would be  
6 a company?

7 MS. BENNETT: Sure.

8 JUSTICE ALITO: What if it's a sole  
9 proprietorship?

10 MS. BENNETT: Then the question would  
11 be what did the parties contemplate, that the  
12 person who owns the proprietorship would  
13 perform the work himself? And if that's true,  
14 then it would be an agreement to perform work  
15 of a transportation worker.

16 If that's not true --

17 JUSTICE ALITO: So some independent --  
18 I thought you said all independent contractors  
19 would fall within this, provided that they were  
20 engaged in foreign or interstate commerce in  
21 the sense relevant under the FAA.

22 But now I think you're -- are you  
23 modifying that? So are you modifying that?

24 MS. BENNETT: Yes, Your Honor, I'm  
25 sorry, I misunderstood the initial question. I

1 was talking about people who would be  
2 considered workers.

3 So independent contractors who are  
4 businesses would not fall within the exemption.  
5 And that's based on the text of the exemption.  
6 It has --

7 JUSTICE ALITO: So, if they're  
8 businesses, what does that mean? I mean, I've  
9 got you on corporations, but beyond that, are  
10 we getting into a difficult area?

11 MS. BENNETT: I -- I think the -- the  
12 --

13 JUSTICE ALITO: If it's a sole  
14 proprietorship, if it's a partnership, but it's  
15 -- it's in business.

16 MS. BENNETT: I think it's easiest to  
17 approach the question from the other direction,  
18 which is to say, was this -- did the parties  
19 contemplate that the person with whom they  
20 agreed would personally perform the work? And,  
21 if so, then it would be an agreement to perform  
22 work with a transportation worker.

23 If the parties didn't contemplate that  
24 the person who agreed to do the work would  
25 personally do it, then it wouldn't fall within

1 the exemption.

2 And so we don't need to decide the  
3 exact definition of business; solely just is  
4 this an agreement for someone who is engaged in  
5 commerce to personally perform the work.

6 JUSTICE KAGAN: But to take one -- an  
7 opposite extreme from UPS or FedEx --

8 MS. BENNETT: Sure.

9 JUSTICE KAGAN: -- you know, suppose  
10 it's like Joe Smith Truckers, and Joe Smith  
11 Truckers is Joe Smith and his brother, and --  
12 and the contract was with Joe Smith workers,  
13 and he says "my brother will do the work."

14 MS. BENNETT: So, if -- if the parties  
15 contemplated that the brother would do the work  
16 -- if the brother -- if the brother is the one  
17 suing, he's likely not bound by the arbitration  
18 agreement at all because he won't have been the  
19 one to sign it. The business will have been  
20 the one to sign it.

21 If Joe Smith is suing and if -- then  
22 the question would be, did the parties  
23 contemplate that Joe Smith was agreeing to  
24 perform work as a transportation worker, or did  
25 the parties contemplate that Joe Smith was

1     agreeing that this company, somebody at this  
2     company, would -- would perform work? And I  
3     think that would be the question.

4             And this is a really rare -- as this  
5     case shows, where it's undisputed, it's a  
6     really rare situation in which it would come  
7     up. And part of the reason for that is if a  
8     company agrees to arbitration, then it's hard  
9     to say that any individual who wasn't  
10    contemplated in the contract would have agreed  
11    to arbitration at all.

12            JUSTICE ALITO: It sort of sounds like  
13    what you're saying is that if the person is a  
14    real independent contractor, then the person is  
15    outside of -- is -- is outside of the  
16    exemption, but if the -- if the entity is not a  
17    real independent contractor, which is your  
18    argument here regarding Mr. Oliveira, it's  
19    different.

20            MS. BENNETT: I -- I'm saying if there  
21    are individual workers who are independent  
22    contractors, and we know there were such  
23    workers in 1925 as now, there are individuals  
24    who are independent contractors, even if  
25    they're bona fide independent contractors, they

1 would be covered within the scope of the  
2 exemption.

3           What I'm saying is if there's an  
4 agreement that's not of a specific person, a  
5 worker, to perform work, then they're outside  
6 the scope.

7           And I want to quickly address one  
8 point that Prime said. Prime -- Prime says  
9 that none of the sources that we have cited are  
10 in the context of distinguishing between  
11 independent contractors and common law  
12 servants. And that's, in fact, not true.

13           We cite dozens of sources that are in  
14 that context. In fact, we cited treatise that  
15 is about the law of independent contractors.

16           The reason that's not the majority of  
17 sources we've cited is because we've also cited  
18 dozens of sources in which -- in a bunch of  
19 different contexts. And so the overwhelming  
20 weight of authority in all of these contexts is  
21 that a contract of employment was an agreement  
22 to perform work.

23           And we were talking about Wisconsin  
24 Central before. What Wisconsin Central says is  
25 we look at what the ordinary, common meaning

1 is. And it's very clear that what an ordinary,  
2 common person would have understood this  
3 exemption to mean in 1925 is that it applied to  
4 all agreements to perform work.

5 We don't look at the rare, isolated  
6 instance. We look at the overwhelming weight  
7 of authority. And that means that the  
8 agreement is an agreement to perform work.

9 If there are --

10 JUSTICE ALITO: Suppose you win on the  
11 issue of arbitrability, the court says "I'm  
12 going to decide whether the exemption applies,"  
13 but then you lose on the issue of the  
14 interpretation of the exemption, the court says  
15 "it doesn't apply to an independent contractor,  
16 Mr. Oliveira's an independent contractor;  
17 therefore, I'm going to order arbitration."

18 Would the arbitrator then be bound by  
19 the determination that he is an independent  
20 contractor for purposes of applying the Fair  
21 Labor Standards Act?

22 MS. BENNETT: No, Your Honor, for two  
23 reasons. First, the -- it would just be an  
24 initial decision of who the right decisionmaker  
25 is. And if the court held that the right

1 decisionmaker is the arbitrator, then the  
2 arbitrator could make that decision.

3 But the second answer is that if a  
4 court were to decide the question of -- if the  
5 court were to hold that the exemption only  
6 applies to common law servants, then it would  
7 likely decide that question under the common  
8 law. And the Fair Labor Standards Act has a  
9 different standard.

10 And so the question on the merits of  
11 whether a worker is an employee or an  
12 independent contractor is different than the  
13 question that would be if the court interpreted  
14 the exemption to be limited to common law  
15 servants.

16 And on that point, I do want to note  
17 that Prime cites, you know, a handful of  
18 isolated instances, but, in fact, none of the  
19 sources that Prime cites, in fact, support its  
20 position. None of those sources say that we  
21 look just to the contract to see whether  
22 someone is a common law servant.

23 At most, those sources use the phrase  
24 "contract of employment" more narrowly than  
25 what we would suggest the ordinary meaning is.



1 But none of them say that if there's reality  
2 contrary to the contract, we would look at  
3 that.

4 And, again, so the -- both the  
5 structure of the statute, the text of the  
6 statute, and the history, all of those factors  
7 mean that, in 1925, the ordinary person would  
8 have understood this exemption to apply to all  
9 agreements to perform work of transportation  
10 workers.

11 If there are no further questions.  
12 Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,  
14 counsel.

15 Mr. Boutrous, you have five minutes  
16 left.

17 REBUTTAL ARGUMENT OF THEODORE J. BOUTROUS, JR.  
18 ON BEHALF OF THE PETITIONER

19 MR. BOUTROUS: Thank you, Mr. Chief  
20 Justice.

21 I want to start by saying we agree  
22 with Mr. Oliveira's position that a  
23 determination that this was an independent  
24 contractor agreement and, therefore, could go  
25 to arbitration would not bind the arbitrator.

1 Then we'd go to the merits.

2           Since counsel left off with the  
3 language and history of the statute, let me  
4 just go back to the statute. It says  
5 "contracts of employment." And this Court --  
6 the Reid case, which is Community for Creative  
7 Non-Violence versus Reid, this Court -- this  
8 Court said, "Nothing in the text of the work  
9 for hire provisions" -- it was the Copyright  
10 Act -- "indicates that Congress used the words  
11 'employee' and 'employment' to describe  
12 anything other than the conventional  
13 relationship of an employer and employee."

14           The Court then went on to say that  
15 when Congress hasn't put anything in the  
16 statute to suggest that -- something else like  
17 any worker doing anything -- I'm paraphrasing  
18 -- then we look to traditional common law  
19 agency principles.

20           On pages 10 and 11 of our brief, we  
21 responded to the -- the cases and authorities  
22 that -- that Mr. Oliveira cited with, among  
23 other things, this Court -- in the Coppage  
24 case, the Court declared "does not the ordinary  
25 contract of employment include an insistence by

1 the employer that the employee shall agree, as  
2 a condition of the employment, that he will not  
3 be idle and will not work for whom he pleases  
4 but will serve his present employer, and him  
5 only, so long as the relationship between them  
6 shall continue."

7 JUSTICE GINSBURG: Was it *Coppage v.*  
8 *Kansas*, shall not join a union? Was that the  
9 contract at issue?

10 MR. BOUTROUS: I -- I -- I think so,  
11 Your Honor. And it was -- yes, *Coppage v.*  
12 *Kansas*. And -- and so the Court there was  
13 clearly making the very distinction we're  
14 talking about, that -- that the -- it was well  
15 established that a contract of employment was  
16 what most people would think: I have a job. I  
17 have an employer. They can tell me what to do.  
18 They can tell me when I come to work. They can  
19 -- they can order me to perform tasks.

20 That was --

21 JUSTICE GINSBURG: But the kind of  
22 contract that was involved in *Coppage v. Kansas*  
23 was outlawed by the -- the National Labor  
24 Relations Act, wasn't it?

25 MR. BOUTROUS: Your Honor, the -- I

1 don't know, Your Honor, on that point, but --

2 JUSTICE GINSBURG: Or Norris-LaGuardia  
3 before that?

4 MR. BOUTROUS: But -- but the -- the  
5 -- the reason we cite it, Your Honor, is that  
6 it was well established what a contract of  
7 employment was.

8 And -- and -- and the -- the other  
9 point I wanted to make was on the alternative  
10 dispute resolution provisions that Circuit City  
11 talked about. Again, the Court said, with  
12 respect to each of them, first of all, Congress  
13 with the exemption was not seeking to oust  
14 certain parties from arbitration. It was  
15 protecting arbitration because there were  
16 alternative mechanisms.

17 So the exemption itself is  
18 pro-arbitration. And in Circuit City, on page  
19 120, 121, with respect to each of the  
20 provisions it cited, the Court talked about  
21 employment relationships, so with respect to  
22 the Transportation Act that -- that counsel  
23 mentioned; it talked about the employees under  
24 the federal law, cited the Transportation Act;  
25 Railway Labor Act, employees; the Shipping

1 Commissioner Act, employers and employees. So  
2 this Court and Congress were anticipating the  
3 traditional employment relationship based on  
4 the language of the statute.

5 And with respect to the scope of the  
6 provision, in this case, the independent  
7 contractor agreement is between New Prime and  
8 the limited liability corporation that  
9 Mr. Oliveira formed. So it is an agreement  
10 between two businesses.

11 And counsel's saying then we have to  
12 look and see how the parties contemplated the  
13 arrangement would function. But the agreement  
14 itself says that Mr. Oliveira could hire other  
15 employees, could work for other entities. It  
16 gave him the right to do that. So, from the  
17 face of the contract, it -- it gave him all of  
18 those -- those rights.

19 And -- and, finally, just with respect  
20 to the definition of, you know, who's an  
21 employee and who's not, because I do think it's  
22 relevant. To divorce -- what -- what counsel  
23 -- what Mr. Oliveira did was take the word  
24 "contract" and find the broadest definition of  
25 contract; and then "employment," and find the

1       broadest definition of that and put them  
2       together.

3               We cite Black's Law Dictionary, which  
4       says, "A contract of employment," and this --  
5       tracking it back to 1927 -- "was an agreement  
6       between an employer and an employee that states  
7       the terms and conditions of employment."

8               But the broadest, this Court has said,  
9       has striking breath -- breadth. The broadest  
10       definition in federal law of employees, in the  
11       Fair Labor Standards Act, the very provision  
12       that Mr. Oliveira is invoking here, and  
13       independent contractors are not covered by that  
14       definition.

15               So it would be anomalous in the  
16       extreme to rule against us on these issues.

17               Thank you very much.

18               CHIEF JUSTICE ROBERTS: Thank you,  
19       counsel. The case is submitted.

20               (Whereupon, at 11:58 a.m., the case  
21       was submitted.)

22

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## Official

|  |   |  |  |
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