Could Recent Supreme Court Case Upend Gig Economy Arbitration Pacts?

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My colleagues Andy Scott and Felix Digilov reported on last week's Supreme Court decision that rejected a trucking company's effort to force its drivers to arbitrate their wage and hour claims against the company, despite the fact they had signed otherwise enforceable arbitration agreements (*New Prime Inc. v. Oliveira*). The reasoning behind that ruling? The SCOTUS held that the Federal Arbitration Act's exemption that excludes "contracts of employment of workers engaged in interstate commerce" includes not only interstate transportation workers with employment agreements, but also those interstate transportation workers with independent contractor agreements. Now, a prominent labor law commentator posits whether this same decision could cause trouble for Lyft, Uber, and other gig economy companies.

Ross Runkel released a video blog entry today on his popular YouTube channel where he discusses the possibility. He notes that the Supreme Court's decision expressly confirmed that independent contractors have "contracts of employment" as defined by the FAA (which is "so big you could drive a truck through" it). The reason? Because back in 1925, when the FAA was passed by Congress, there was not a fine distinction between the categories of "employee" or "contractor" as there is today. Which leads to Runkel's big question: "Is an Uber driver in interstate commerce?" If so, he theorizes, the FAA would not apply, and courts would be prohibited from pushing their federal wage and hour claims (and, assumedly, other similar causes of action) into arbitration.

He concludes: "It will be interesting to see what the lower courts do with this." And while many might disagree with him about his theory, there certainly can be no doubt that he is right that evolution of the *New Prime* decision—and whether it bleeds into the gig economy—will be "interesting."

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