No. 17-1111

In the Supreme Court of the United States

J.B. HUNT TRANSPORT, INC.,

Petitioner,

v.

GERARDO ORTEGA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF AMICUS CURIAE TRUCK RENTING AND LEASING ASSOCIATION IN SUPPORT OF PETITIONER

DAVID B. SALMONS
Counsel of Record
STEPHEN K. DIXON
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000
david.salmons@morganlewis.com
stephen.dixon@morganlewis.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF CONTENTS—continued

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—continued

Page

INTEREST OF AMICUS CURIAE[1]

The Truck Renting and Leasing Association ("TRALA") is a voluntary, not-for-profit national trade association, founded in 1978, that focuses on providing a uniform voice for the trucking and leasing industry. TRALA's members engage primarily in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. Its membership also includes more than one hundred supplier member-companies that offer equipment, products, and services to TRALA leasing company members.

Some TRALA members have motor carrier operations. These TRALA members' prices, routes, and services are directly impacted by mandatory compliance with California's meal and rest break and minimum wage laws. Other TRALA members are leasing companies that must routinely reposition lease or rental vehicles within California, from within California to another state, or from within another state to California. Repositioning often requires the services of the TRALA members' employee-drivers. When these drivers cross state lines into California,

---

[1] Pursuant to S. Ct. R. 37.2, TRALA notified counsel of record for the parties of its intent to file an amicus brief at least ten days prior to its due date for this brief. Counsel for all parties have consented to this filing. Pursuant to S. Ct. R. 37.6, TRALA affirms that the brief was not authored in whole or in part by counsel for a party and that none of the parties or their counsel, nor any other person or entity other than amicus, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

they are subject to California's rigid wage and hour regulations.

Some TRALA members operate fleets of heavy-vehicle tow truck and other vehicles used to perform repair and maintenance services on the commercial motor vehicles leased to motor carrier customers. These maintenance vehicles may be asked to respond to highway accidents or breakdowns on an emergency basis. Compliance with California's meal and rest break and minimum wage laws limits their ability to respond and potentially poses safety concerns.

Given TRALA's extensive interest in national uniformity in trucking regulations, it respectfully submits this brief to provide further information about the impact of the California rules and laws in question and to urge review of the Ninth Circuit's decision below.

SUMMARY OF ARGUMENT

The U.S. Court of Appeals for the Ninth Circuit has consistently demonstrated its determination to inappropriately narrow the express preemption provision in the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1). Acting with insufficient regard for the text of the statute, this Court's precedent, and the Supremacy Clause of the U.S. Constitution, the Ninth Circuit below held that the FAAAA's preemption of state laws that "relate[] to a price, route, or service of any motor carrier" does not apply to California laws that directly relate to the prices, routes,

and services of motor carriers such as interstate trucking companies.

The Ninth Circuit has traveled down this road before. *See, e.g.*, *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 2049 (2015). The decision below, however, goes much farther than *Dilts* and the Ninth Circuit's prior cases, both in terms of the extent to which it misapplies the law and the degree to which its application will negatively affect interstate commerce. By (1) applying California's rest and meal break laws to clearly interstate trucking, (2) extending that holding to California's wage laws, not just its rest and meal break laws, and (3) ignoring a full record showing the significant effects those wage laws have on interstate trucking prices, routes, and services, the decision below represents a dramatic extension of *Dilts*. The decision below, therefore, poses far greater obstacles for interstate trucking and a uniform national application of the FAAAA than prior Ninth Circuit decisions. This Court's review is necessary to correct the Ninth Circuit's overly narrow reading of FAAAA preemption and to ensure that Congress's goal of a uniform rule for motor carriers is not frustrated by a restrictive patchwork of regulations that vary from state to state.

In the proceedings below, the district court recognized that applying California's wage, rest and meal break laws to the clearly interstate trucking at issue would represent a dramatic and impermissible extension of the Ninth Circuit's decision in *Dilts.* For that reason, the court granted summary judgment and judgment as a matter of law on FAAAA preemp-

tion grounds in favor of Petitioner. On appeal, the Ninth Circuit summarily rejected the district court's decisions without analysis, holding that "California's meal and rest break laws are not 'related to' prices, routes, or services" and also that "the FAAAA does not preempt state wage laws." *Ortega v. J.B. Hunt Transp., Inc.*, 694 F. App'x 589, 590 (9th Cir. 2017) (citing *Dilts*, 769 F.3d at 647-48 & n.2; *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998)). Of course, just the opposite is true. Especially in the context of clearly interstate trucking, California's meal and rest break policies plainly "relate[] to" prices, routes, and services in the trucking industry, and the Ninth Circuit erred in holding that the FAAAA does not preempt state-specific wage laws that affect the interstate operations of covered motor carriers.

The California wage, meal and rest break regulations challenged in this case directly relate to motor carriers' services by dictating times when no service may be provided, and by reducing the amount of time an employee may work during a shift. They affect routes by requiring drivers to deviate from routes in order to find a safe and lawful stopping place to ensure full compliance. And they impact prices by requiring employers to spend more on labor and to reallocate resources in order to provide the same level of service. State wage regulations, such as the California minimum wage rules that Respondents use to challenge Petitioner's incentive-based pay structure, have similarly restrictive effects on a motor carrier's ability to operate across state lines.

The Ninth Circuit's decision below relied entirely on two of that court's prior opinions. The court's reliance was inappropriate—and the decision below incorrect—for several reasons. First, *Dilts* was wrongly decided and, to the extent that decision controls the outcome in this case, it must be vacated. In *Dilts*, the Ninth Circuit held that the FAAAA preempts a state law only where that law "binds" a carrier to a "specific" set of rates, routes, or services. 769 F.3d at 647-49. But this Court has held, in the context of state laws affecting interstate transportation, that federal law preempts any state law having a "*connection with*" prices, routes, and services. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (emphasis added). The Ninth Circuit's attempt to impose a restrictive "binding" standard under *Dilts* is wrong. Similarly, the Ninth Circuit incorrectly relied on *Dilts* for the proposition that only state laws that impair a motor carrier's "point-to-point" transport are preempted by the FAAAA. *See* 769 F.3d at 649 (citation omitted). No fewer than five other federal circuit courts have rejected variants of this erroneous "point-to-point" standard. *See* Pet. at 10-19.

Finally, the Ninth Circuit's holding that Respondents' incentive-based pay claims are not preempted not only creates a circuit split, *see* Pet. at 19-23, it also forces interstate motor carriers to comply with a costly and burdensome minimum wage law that has a direct effect on their services and business pricing.

This Court has repeatedly invalidated generally applicable laws when their application encroaches on an area the federal government has reserved to it-

self. It should do so again here. This Court's review is necessary to correct the Ninth Circuit's errors and to restore the uniformity Congress intended for the regulation of the prices, services, and routes of motor carriers.

ARGUMENT

I. THE BROAD LANGUAGE OF THE FAAAA'S PREEMPTION PROVISION ADVANCES CONGRESS'S GOAL THAT MOTOR CARRIERS FACE A UNIFORM SET OF NATIONAL REGULATIONS

This case turns on the meaning of the preemption provision in the FAAAA. As with all questions of statutory interpretation, courts are to "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales*, 504 U.S. at 383 (quoting *FMC Corp. v. Holliday*, 498 U.S. 52, 57 (1990)). In this case, the relevant preemptive language is unmistakably and purposefully broad:

> a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . .

49 U.S.C. § 14501(c)(1).

This Court has repeatedly recognized that "[t]he ordinary meaning of these words is a broad one . . . and the words thus express a broad pre-emptive

purpose." *Morales*, 504 U.S. at 383 (interpreting the preemptive scope of the Federal Aviation Act of 1958); *see also Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987) (noting the "expansive sweep" of a similar provision in the Employee Retirement Income Security Act of 1974). Congress was fully aware of these decisions when it drafted the FAAAA, and it specifically intended to achieve the maximum preemptive effect on statutes that "related to" motor carriers' prices, routes and service. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008); *see also id.* at 377 (Ginsburg, J., concurring) (noting "[t]he breadth of FAAAA's preemption language").

Indeed, both the purpose and the structure of the statute confirm that Congress was determined to prevent states from undermining the national decision to deregulate the trucking industry. *See* H.R. REP. NO. 103-677, at 39 (1994) (Conf. Rep.) ("Congress finds and declares that the regulation of intrastate transportation of property by the States has imposed an unreasonable burden on interstate commerce; impeded the free flow of trade, traffic and transportation of interstate commerce; and placed an unreasonable cost on the American consumers; and certain aspects of the State regulatory process should be preempted."); *Rowe*, 552 U.S. at 371 ("Congress' overarching goal [i]s helping ensure transportation rates, routes and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'" (quoting *Morales*, 504 U.S. at 378)).

Furthermore, the statute itself contains a limited number of specific exemptions, which confirm that the general rule of preemption sweeps widely. For example, the statute expressly permits state regulations related to the safety of motor vehicles, route restrictions "based on the size or weight of the motor vehicle or the hazardous nature of the cargo," and regulations related to insurance requirements. 49 U.S.C. § 14501(c)(2)(A). There would be little need for these specific exemptions if Congress had not intended to broadly preempt most state regulations having any relation to prices, routes or services.

The Ninth Circuit said that its decision in *Dilts* "compel[led] the conclusion" below. *Ortega*, 694 F. App'x at 590. *Dilts* itself is an unreasoningly narrow and inconsistent decision, which openly deviates from Congress's expressed intent. *See* Pet. at 11-15. Review is warranted on that basis alone.

But, as explained below, the Ninth Circuit's decision in this case represents a significant and troubling extension of *Dilts*'s flawed reasoning, in at least three respects: (1) *Dilts* purported to apply only to *intra*state trucking, whereas the decision below extends to clearly *inter*state trucking; (2) the decision below extends to California's wage laws, in addition to the rest and meal break laws at issue in *Dilts* and here, and thereby implicates an additional circuit split not at issue in *Dilts*; and (3) the Ninth Circuit in *Dilts* relied on a case-specific failure of proof of effects on trucking routes, prices, and services, whereas the Ninth Circuit in this case disregarded an extensive record showing significant effects on interstate trucking routes, prices, and services. *See* Part

III, below. Thus, far more so than in *Dilts*, it is now clear that the Ninth Circuit is systematically and categorically narrowing the FAAAA's preemption language to permit States to re-regulate what Congress expressly intended to deregulate. Review by this Court is therefore urgently needed.

II. THIS CASE IS OF NATIONAL IMPORTANCE TO PROVIDERS AND RECIPIENTS OF MOTOR CARRIER SERVICES

A. Under Any Standard, The California Laws And Regulations The Ninth Circuit Found Not To Be Preempted Substantially Affect The Rates, Routes, And Prices Of Motor Carriers

The Ninth Circuit below significantly compounded its own prior errors when it deferred to its holding in *Dilts* and stated that California's "meal and rest break laws are not 'related to' prices, routes, or services, and therefore are not as a matter of law preempted by the FAAAA." *Ortega*, 694 F. App'x at 590 (citing *Dilts*, 769 F.3d at 647-48 & n.2). Respondents in *Dilts* argued to this Court in seeking to avoid review that the Ninth Circuit in *Dilts* was careful to limit its holding to only intrastate trucking, and even then it relied on a failure of proof of effects on trucking prices, routes, and services and left open the possibility that future cases would be able to make such a showing and thereby establish that the FAAAA preempts California's rest and meal break laws in certain circumstances. *See* Resp. Br. in Opp., *Penske Logistics, LLC v. Dilts*, S. Ct. No. 14-801 at 1-3, 11, 18-19.

As explained more fully in Part III, the Ninth Circuit's decision below obliterates those rationales for avoiding review and leaves no doubt that the Ninth Circuit has adopted a crimped, categorical reading of FAAAA preemption that permits States to re-regulate what Congress expressly deregulated, and to do so regardless of the effects those state regulations have on interstate trucking. Thus, in addition to being wrong as a legal matter, the Ninth Circuit's decision also "disregard[ed] the real-world consequences" of California's wage and hour rules, and "g[a]ve dispositive effect to the form of a clear intrusion into a federally regulated industry." *Nw., Inc. v. Ginsberg*, 134 S. Ct. 1422, 1430 (2014) (quoting *Brown v. United Airlines, Inc.*, 720 F.3d 60, 66-67 (1st Cir. 2013)).

For example, in most states, including California, a driver may not legally pull over to the side of the highway and park. Rather, a driver must exit the highway and locate a stopping place that safely and lawfully accommodates the vehicle. California's meal and rest break rules necessarily impact interstate trucking routes because the rules require a driver to depart from a planned route, drive to an appropriate stopping area, and take the meal or rest break before driving back to the planned route. This direct requirement to alter a route brings California's meal and rest break rules within the broad sweep of the FAAAA's preemption provision.

But the impact of California's meal and rest break rules on trucking routes and services goes much further. The driver must locate safe and legal parking during specific periods as directed by Cali-

fornia's meal and rest break rules. And only routes that provide commercial parking areas at sufficient intervals may be utilized, which means there are fewer routes on which commercial trucking companies can legally operate. Under California law and the Ninth Circuit's decision below, drivers would often be forced to take routes that are significantly longer in favor of more direct routes that lack adequate stopping locations. Drivers may also have to circumvent congested metropolitan areas (of which California has more than a few) entirely, for fear of being stranded in traffic without access to parking at the required times.

Moreover, even if stopping locations are preplanned into routes, there is no guarantee that there will be available space at a given location for a rest break. Locating alternatives to planned stops where space is unavailable results in even greater deviation from planned routes.

As the district court accurately summarized this issue, if California's wage and hour laws are *not* preempted by the FAAAA, then

> [f]ive separate times [during a twelve-hour shift], [commercial truck] drivers must be allowed to pull their trucks off the road, find a place to park, and then rest or eat without any job-related duties. Not only must the drivers be allowed to stop hauling cargo for a total of ninety minutes throughout the day, they also are forced to travel only on routes that have access to five different locations where they can find a place

> to park their truck throughout the workday. An eighteen-wheeled vehicle cannot simply be parked on the side of any given road. Consequently, these required meal and rest breaks certainly add a layer of complexity to a motor carrier's schedule planning, undoubtedly limit the number of routes available, and absolutely reduce the total time a driver can possibly be on the road actually hauling cargo.

Ortega v. J.B. Hunt Transp., Inc., No. CV 07-08336 BRO FMOX, 2013 WL 5933889, at *6 (C.D. Cal. Oct. 2, 2013), *vacated*, 694 F. App'x 589 (9th Cir. 2017).

Just as the district court observed, forced compliance with California's rigid wage and hour rules will impact commercial trucking service in myriad ways. At a minimum, compliance on extended trips will reduce a driver's productive time by well in excess of ninety minutes per shift. By increasing the time required to complete a service or delivery, the same rules ensure that less total service will be provided to consumers. For certain longer hauls with tighter time frames, like same-day pick-ups and deliveries over greater distances, the ability to travel less distance in the same amount of time may make timely delivery impossible and result in the total discontinuance of services.

These problems are compounded when one considers the normal schedule of a motor carrier in the commercial trucking industry. Many customers depend on precision in delivery times. The California laws that the Ninth Circuit would apply to the entire

trucking industry impose harsh mandates, in some cases dictating when and for how long employees must take breaks. This is incompatible with the efficient operation of the interstate trucking industry. For example, if an employee has been driving for four hours and is minutes away from making an on-time, scheduled delivery, the employer may not require that he or she delay the mandated rest break in order to make the delivery on time.[2] Instead, the driver must first locate a stopping area and then take the break. These constraints are certainly not the product of "competitive market forces," *Rowe*, 552 U.S. at 371, and thus fall within the scope of laws that Congress intended to preempt.

California's meal and rest break rules also threaten to restrict the rental fleet and emergency breakdown services offered by some TRALA members to leasing customers. Where the location of a breakdown is not knowable in advance of the need for service, the route from dispatch to stranded customer may not be preplanned, or the safest and most expeditious route may not offer access to sufficient stopping locations. These conditions may limit the ability to provide emergency services or may create safety problems with response time that impact the quality of the service.

---

[2] California law requires that employers completely relieve workers of all duties, including non-driving duties, during each of these break periods. This means that employers may not utilize non-driving time, like waiting for the truck to be loaded or unloaded, to accommodate scheduling of break periods.

Impacts to routes and services necessarily affect prices. Carriers must hire additional drivers or reallocate resources in order to maintain service levels. Route deviations impair the ability to optimize refueling locations. More frequent starting and stopping is inefficient for fuel burning, which increases fuel costs. It causes more wear and tear on trucks, and increases the incidence and cost of maintenance. In a competitive field, increased costs necessarily result in increased rates.

Finally, although the Ninth Circuit summarily rejected the district court's conclusions regarding the FAAAA's preemption of California's minimum wage laws, the district court's analysis was both thorough and entirely correct. As the lower court held, it is simple "[c]ommon sense" that forced compliance with California's minimum wage laws would affect a motor carrier's services and prices "in more than a 'tenuous, remote, or peripheral' manner. Indeed, the effect would even be significant." *Ortega v. J.B. Hunt Transp. Inc.*, No. CV 07-08336 BRO SHX, 2014 WL 2884560, at *5 (C.D. Cal. June 4, 2014), *vacated*, 694 F. App'x 589 (9th Cir. 2017). By not even attempting to address these issues, the Ninth Circuit has made clear it is applying a strict, categorical rule that California's wage, rest and meal break laws—as well as any number of other "background" state laws and regulations—are never preempted by the FAAAA regardless of their actual impact on interstate trucking routes, prices, and services.

B. The Size And Importance Of California And Its Neighboring States Weigh In Favor Of Review Of The Ninth Circuit's Approach To FAAAA Preemption

California has over 50,000 lane miles of state highways and another 22,000 lane miles of federal roadways.[3] The Ninth Circuit encompasses the entire West Coast and the seven most westerly contiguous states, many of which are of a similar geographic scale. It contains major urban centers including Los Angeles, San Francisco, Las Vegas, Phoenix, Portland, and Seattle, as well as a variety of large and small commercial ports that receive cargo daily for intrastate and interstate distribution.

In all of these states, the imposition of meal and rest break and wage laws like those imposed by the State of California would seriously affect the prices, services, and routes of motor carriers that are forced to comply. Driving between San Diego and San Francisco, for example, takes a minimum of eight hours, triggering the requirement of three breaks under California law. If similar rules applied in other states, rest breaks, in addition to those required by federal rules, would be obligatory for trips from Reno to Las Vegas, Nevada (7 hours); Flagstaff to Tucson, Arizona (4 hours); and Boise to Idaho Falls, Idaho (4 hours). Same-day, round-trip delivery service, like trips between Missoula and Billings, Montana (10

---

[3] State of California Dep't of Trans., *2015 California Public Road Data, Table I* (June 2017), http://www.dot.ca.gov/hq/tsip/hpms/hpmslibrary/prd/prd2015.pdf.

hours), and Spokane and Seattle, Washington (9 hours), may have to be discontinued entirely if the service cannot be performed within the allowable service time, while accommodating for stops at adequate parking locations.

III. THIS CASE IS PARTICULARLY APPROPRIATE FOR REVIEW

The Ninth Circuit's cursory decision belies the fully formed record in this case. The parties presented ample evidence and argument to the U.S. District Court for the Central District of California. The fact that Petitioner successfully relied on detailed evidence to demonstrate that California's wage and hour laws are subject to FAAAA preemption further emphasizes the erroneous nature of the Ninth Circuit's summary reversal. *See, e.g.*, *Ortega*, 2014 WL 2884560, at *4 (stating that Petitioner presented the court with "ample evidence" to support its argument that California's wage and hour laws were "related to" Petitioner's prices and services). This is in stark contrast to the circumstances in *Dilts*, where the Ninth Circuit found that the defendant had "submitted no evidence" to show that California's meal and rest break laws would have an effect on the carrier's prices, routes, or services. In fact, there are numerous reasons why this case, more so than *Dilts*, cries out for this Court's review.

A. This Case Concerns Interstate Commercial Trucking Activity

Critically, unlike *Dilts*, this case concerns explicitly *interstate* transportation. *Dilts* was "*not* about . .

. FAAAA preemption in the context of interstate trucking." 769 F.3d at 651 (Zouhary, J. concurring); *see also id.* ("On this record, and in the *intrastate context*, California's meal and rest break requirements are not preempted." (emphasis added)). The Ninth Circuit was wrong to hold that the intrastate transportation activities in *Dilts* were not covered by the FAAAA, but it is a far greater affront to Congress's clear intent in the FAAAA to hold that the unquestionably *interstate* activity in this case is similarly beyond the FAAAA's reach.

TRALA's members will be particularly injured by the application of this aspect of the Ninth Circuit's decision. Like California, several other states have enacted meal and rest break laws and promulgated regulations prohibiting incentive-based pay structures. Meanwhile, the business model of many of TRALA's members is inherently interstate in nature. These businesses would be seriously and negatively affected if subjected to a patchwork of state-level wage and hour laws, compliance with which could be triggered simply by crossing state boundaries—despite Congress's clear intent in enacting the FAAAA to avoid such a morass.

B. This Case Concerns Minimum Wage Laws, In Addition To Meal And Rest Break Rules

Furthermore, whereas *Dilts* concerned the potential preemption of only California's meal and rest break requirements, this case also implicates California's minimum wage laws, which Respondents argue impose a prohibition on incentive-based pay in the interstate trucking industry. This is an im-

portant distinction because it extends the scope of the Ninth Circuit's decision beyond those carriers whose businesses involve longer-term transportation needs implicating meal and rest break issues. Instead, the decision below implicates not only those businesses but *also* any business engaging in a payroll practice that the plaintiffs' bar might deem fit to challenge for alleged noncompliance with California's minimum wage and wage calculation rules.

This is a substantial extension of the *Dilts* holding, and one that warrants immediate review. Far from a theoretical issue, forced compliance with California's rigid wage laws would have an immense impact on interstate commercial trucking in California and in the surrounding region. TRALA's members employ a variety of wage calculation and payroll systems, including certain forms of incentive-based pay. These methods of compensation are favored in the trucking industry because they incentivize drivers to provide services to customers as efficiently as possible. Adherence to California wage and hour law—and compliance with other, similar laws and regulations in neighboring states—may require abandoning these practices altogether.

C. This Case Exemplifies The Ninth Circuit's Continued Effort To Re-Regulate The Trucking Industry By Judicial Fiat

The Ninth Circuit's decision in this case is consistent with that court's ongoing attempts to re-regulate the transportation industry by narrowing the application of FAAAA preemption. The Ninth Circuit continues to advocate its own, mistaken ap-

proach to FAAAA preemption. This time the court has extended its misinterpretation of the law into purely interstate commerce and, further, into areas of state wage regulation. This Court should step in to correct the numerous errors below and restore the FAAAA to the scope clearly intended by Congress.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID B. SALMONS
Counsel of Record
STEPHEN K. DIXON
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
(202) 739-3000
david.salmons@morganlewis.com
stephen.dixon@morganlewis.com

Counsel for Amicus Curiae

March 7, 2018