No. 20-1662

IN THE

Supreme Court of the United States

William B. Trescott
Petitioner

v.

Federal Motor Carrier Safety Administration
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

William B. Trescott
26276 Farm to Market Road 457
Bay City, Texas 77414
(979) 244-3134

QUESTIONS PRESENTED

1. Is it Constitutional for a court to defer to a person lacking professional experience under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), or does the 14th Amendment require "that the courts make certain that professional judgment in fact was exercised" as this Court ruled in *Youngberg v. Romeo,* 457 U.S. 307 at 321 (1982)?

2. Can an agency rely solely on public comments to determine that a state health and safety law is an "unreasonable burden on interstate commerce" as the 9th Circuit ruled in *Int'l B'hood of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F.3d 841, 857 (9th Cir. 2021), or if it thinks that the health effects are not problematic, does the Due Process Clause require it to "say so in the rule and to explain why" as the DC Circuit ruled in *Public Citizen v. FMCSA,* 374 F.3d 1209, 1217 (D.C. Cir. 2004)?

PARTIES

Petitioner is:
William B. Trescott, a trucker by trade who has not issued debt securities to the public.

Respondent is:
The Federal Motor Carrier Safety Administration.

Petitioners before the Ninth Circuit were:
International Brotherhood of Teamsters, Locals 848 and 2785; Everardo Luna; Charles "Lucky" Lepins; Julio Garcia; Jesus Maldonado; Jose Paz; Duy Nam Ly; Phillip Morgan; and The Labor Commissioner For The State of California.

Intervenor before the Ninth Circuit was:
William B. Trescott.

Amici Curiae before the Ninth Circuit were:
The State of Washington; State and National Employment Lawyers Associations; Specialized Carriers & Rigging Association, PODS Enterprises LLC, Ryder System Inc., Western States Trucking Association; American Trucking Associations Inc., California Trucking Association, Washington Trucking Associations, Intermodal Association of North America, American Moving and Storage Association; CRST Expedited Inc., FAF Inc., Heartland Express Inc., John Christner Trucking LLC, Penske Logistics LLC, Penske Truck Leasing Co. L.P., Rail Delivery Services Inc., U.S. Xpress Inc; and, The Chamber of Commerce of the United States.

TABLE OF CONTENTS

Questions Presented i

Parties and Corporate Disclosure ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 3

Reason For Granting the Writ 10

The Ninth Circuit has entered a decision that has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. 10

Conclusion 20

Appendix:

OPINION: Ninth Circuit ..... IBT v. FMCSA - 1
ORDER: Ninth Circuit ..... IBT v. FMCSA - 37
ORDER: Ninth Circuit ..... IBT v. FMCSA - 39
MANDATE: Ninth Circuit ..... IBT v. FMCSA - 42

TABLE OF AUTHORITIES

CASES **pages**

American Trucking Ass'ns v. FMCSA,
724 F.3d 243 (D.C. Cir. 2013) 7

Aulenback v. FHWA,
103 F.3d 156 (D.C. Cir. 1997) 18

Brinker v. Superior Court of San Diego,
273 P.3d 513 (Cal. 2012) 6

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984) 11, 17, 19

Cicairos v. Summit Logistics, Inc.,
133 Cal App.4th 949 (2006) 3

County of Sacramento v. Lewis,
523 U.S. 833 (1998) 14

DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189 (1989) 14

Missouri K.&T. Ry. Co. v. United States.
231 U.S. 112 (1913) 16

Owner-Operator Independent Drivers Ass'n v. FMCSA, 494 F.3d 188 (D.C. Cir. 2007) 6

Owner-Operator Independent Drivers Ass'n v. FMCSA, 656 F.3d 580 (7th Cir. 2011) 8

Owner-Operator Independent Drivers Ass'n v. Pena, 996 F.2d 338 (D.C. Cir. 1993) 18

Public Citizen v. FMCSA,
374 F.3d 1209 (D.C. Cir. 2004) 3, 13, 15

Rochin v. California,
342 U.S. 165 (1952) 10, 14, 18, 19

Tull v. United States,
481 U.S. 412 (1987) 16

United States v. Southern Pacific Co.
245 Fed. 722 (9th Cir. 1917) 15

Youngberg v. Romeo,
457 U.S. 307 (1982) 10, 11, 15, 18

STATUTES **pages**

42 U.S.C. § 1985 ..... 2, 17
49 U.S.C. § 113(c) 2, 4, 6, 11
49 U.S.C. § 30162 4
49 U.S.C. § 31136 ..... 2, 13, 15, 17, 19
49 U.S.C. § 31137(f)(1)(A) 8
49 U.S.C. § 31141 ..... 12, 16, 17-19
49 U.S.C. § 31502 ..... 15, 17, 19
49 U.S.C. § 351(a) 18

REGULATORY MATERIALS **pages**

49 C.F.R. § 390.36(b)(2) 8, 19
49 C.F.R. § 395 ..... 3, 13, 15, 16
73 F.R. 79204 6
80 F.R. 78383 ..... 13, 16
83 F.R. 67470 ..... 9, 16
84 F.R. 48079 9
85 F.R. 33403-33447 ..... 9, 16

OTHER REFERENCES **pages**

Belzer, Michael, *Sweatshops on Wheels*, Oxford, 2000 19

Caro, Robert, *Means of Ascent*, Knopf, 1990 18

Heavy Duty Trucking Magazine www.truckinginfo.com/news 6

National Highway Traffic Safety Administration *2017 Fatal Motor Vehicle Crashes* 9

National Highway Traffic Safety Administration Fatality Analysis Reporting System 3, 5, 8

National Highway Traffic Safety Administration *Traffic Safety Facts—Large Trucks* 7, 12

New York Times 7

Overdrive Magazine 11

Parkhurst, Mike, *Trucker Wars*, Hollywood Continental Films, 2013 12

Pittsburgh Post Gazette 5

Scandinavian Journal of Urology and Nephrology 3

University of Michigan Transportation Research Institute 6

OPINIONS BELOW

The Opinion of the Court of Appeals for the Ninth Circuit is reproduced on page 1 of the Appendix.

The Order denying a Petition for Panel Rehearing is reproduced on page 37 of the Appendix.

The Order denying four petitions for Panel Rehearing and Rehearing En Banc is reproduced on page 39 of the Appendix.

The Mandate of the Court of Appeals for the Ninth Circuit is reproduced on page 42 of the Appendix.

JURISDICTION

The Judgment of the Court of Appeals was entered January 15th 2021. A Petition for Panel Rehearing was filed on January 24th 2021 which was denied the following day on January 25th 2021. A Petition for Rehearing En Banc was filed on February 7th 2021 and a second Petition for Rehearing En Banc along with two additional petitions for Panel Rehearing and Rehearing En Banc were filed on March 1st 2021, which were denied on March 25th 2021. This Court has Jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides:

> Congress shall make no law...abridging...
> the right of the people peaceably to assemble...

The Seventh Amendment provides:

> In suits at common law, where the value in

> controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1985 provides:

> If two or more persons...conspire or go in disguise...for the purpose of preventing or hindering...the equal protection of the laws... the party so injured or deprived may have an action for the recovery of damages.

49 U.S.C. § 113(c) provides:

> The head of the Administration shall be...an individual with professional experience in motor carrier safety.

49 U.S.C. § 31136(a)(4) provides:

> At a minimum, the regulations shall ensure that...the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

STATEMENT OF THE CASE

In 2004, the DC Circuit Court of Appeals vacated the Federal Motor Carrier Safety Administration's truckers' hours of service rules promulgated under 49 C.F.R. 395 because the agency failed to consider their impact on driver health. For instance, bus drivers (unable to stop for breaks) were found to have an increased risk of bladder cancer, while men able to drink additional fluids had reduced risk.[1]

> "It may be the case, for example, that driving for extended periods of time and sleep deprivation cause drivers long-term back problems, or harm drivers' immune systems. The agency may of course think that these and other effects on drivers are not problematic...but if so it was incumbent on it to say so in the rule and to explain why." *Public Citizen v. FMCSA,* 374 F.3d 1209, 1217 (D.C. Cir. 2004)

Consistent with this decision, a California court ruled that truckers had to receive meal and rest breaks—reducing tractor-trailer occupant fatalities sixty percent between 2002 and 2010.[2] *Cicairos v. Summit Logistics, Inc.*, 133 Cal App.4th 949 (2006). However, on April 26th 2006, four students and an employee of Taylor University, a small Evangelical Christian college, were killed by an overworked

---

[1] R.C. Reulen et al., "A meta-analysis on the association between bladder cancer and occupation"; M. Brinkman, M.P. Zeegers, "Nutrition, total fluid, and bladder cancer," *Scandinavian Journal of Urology and Nephrology*, Sept. 2008

[2] Fatality Analysis Reporting System, NHTSA, www-fars.nhtsa.dot.gov

trucker who allegedly fell asleep at the wheel near Fort Wayne Indiana. Due to a mix-up by the coroner, a student so horrifically crushed she was unrecognizable was buried in the wrong grave while another was nursed back to health by the dead girl's parents.[3] Though the mix-up had nothing whatsoever to do with motor carrier safety, three weeks later in response to sensational media outrage, President Bush appointed an alumnus of Taylor University to lead the Federal Motor Carrier Safety Administration in violation of the *Motor Carrier Safety Improvement Act of 1999*, which required him to appoint "an individual with professional experience in motor carrier safety" to head the agency. 49 U.S.C. § 113(c).

Though John H. Hill's performance as a law enforcement officer was impeccable prior to his joining the Bush Administration, he never met the minimum standard for employment in the motor carrier safety profession—an above average safety record driving 18-wheelers. Nor did he publish anything demonstrating expertise designing trucks or testing safety devices as any reasonable person would expect of someone with professional experience in motor carrier safety.

When Hill chose not to legalize modern safety devices found on cars such as roll bars, crash absorbent bumpers, and underride beams, Petitioner filed a petition under 49 U.S.C. 30162, requiring the Secretary of Transportation to explain the reason for the ban within 120 days or to begin a rulemaking to replace obsolete vehicle size and weight limits with

---

[3] www.taylor.edu/news/taylor-university-observance-of-2006-crash-is-next-week

cargo size and weight limits that did not ban modern safety features. When Hill stopped the head of the Federal Highway Administration's Size and Weight Division from responding by promoting him to head his Enforcement Division, the House Transportation Committee summoned him to appear on the day the response was due.

On July 11th 2007, Hill claimed before the House Transportation Committee that "2005 enjoyed one of the lowest large-truck fatality rates in thirty years" when in fact the number of truckers killed on the job increased 17% from 2002 to 2005 and the number of pedestrians and bicyclists killed by trucks increased 29%—a 14 year high. Truckers killed in daytime multi-vehicle crashes doubled.[4] Three weeks later, the FBI raided the home of the Senate Commerce Committee Chairman who confirmed him without a hearing, who was subsequently convicted of failing to report gifts (*USA v. Stevens*, DDC-08-0231, 10/27/08)(Petitioner's 49th birthday). Charges were abruptly dropped after Petitioner sent the FBI a complaint alleging that a dozen truckers killed in Texas had a greater than fifty-fifty chance of being victims of wrongful death[5]; subsequently provoking a disgruntled trucker to murder eleven Jews at a synagogue near Pittsburgh on the tenth anniversary of his conviction—the deadliest attack on Jews in the history of the United States.[6] Leaving office, Hill blew the whistle claiming, "I thought I would have a lot of say in truck safety in this country [but] politi-

---

[4] Fatality Analysis Reporting System, NHTSA, www-fars.nhtsa.dot.gov

[5] www.truckingvideo.com/litigation/complaint.pdf

[6] Rich Lord, *Pittsburgh Post Gazette*, 10/29/2018

cal people tell the appointed people what they're going to do."[7] Without an army to enforce its order, the DC Circuit could only re-vacate the vacated rules when they were re-promulgated in violation of the *Administrative Procedures Act.* See *OOIDA v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007).

Consistent with this decision, the agency denied a petition to preempt California's meal and rest break rules, 73 F.R. 79,204 (Dec. 24th 2008), and in 2009 it agreed to obey the orders of the DC Circuit after the Department of Justice refused to defend the agency (*Public Citizen v. FMCSA,* DC-09-1094). The California Supreme Court also upheld the rest break rules. *Brinker v. Superior Court of San Diego,* 273 P.3d 513 (Cal. 2012). Within hours of reaching the settlement agreement, however, the Commerce Committee confirmed Anne Ferro, President of the Maryland Motor Truck Association, as President Obama's Federal Motor Carrier Safety Administrator.

Like Hill, Ferro did not meet the minimum standard for employment in the motor carrier safety profession—an above average safety record driving eighteen-wheelers. Nor did she demonstrate experience designing trucks or testing safety devices as required under Section 113(c). Blowing the whistle, Hill claimed, "I can assure you that Anne Ferro is getting marching orders."[7] His allegation was not without support. According to the University of Michigan Transportation Research Institute, Maryland reported only one truck crash after Ferro took over, compared to 114 crashes per month when Hill ran the agency.[8] Also, the National Highway Traffic

---

[7] www.truckinginfo.com/news/news-detail.asp?news_id=73580

[8] csa.fmcsa.dot.gov/Documents/Evaluation-of-the-CSA-Op-

Safety Administration reported that trucks drove one-third more miles under Ferro[9] than under Hill.[10] Obviously, if crashes are under-reported and miles driven are exaggerated, an administrator with no apparent qualifications can appear to improve safety.

Defying both court orders, in 2011 Ferro re-promulgated the twice-vacated rules with changes that the Inspector General of the Department of Transportation later determined were insignificant.[11] Unexpectedly, the DC Circuit then reversed itself, ruling that truckers such as the Petitioner lacked standing to challenge a trucking regulation despite having won the two previous cases. *American Trucking Ass'ns v. FMCSA*, 724 F.3d 243, 249 n.7 (D.C. Cir. 2013) ("Trescott offers nary an argument in his briefs as to why his lobbying activities would establish standing. For this reason, we need not reach the merits of his arguments.")(Cert. denied, 13-509, Jan. 13th 2014). Congress responded by mooting this case in the *Consolidated Appropriations Act of 2014* (Pub. L. 113-235, 128 Stat. 2712)—suspending enforcement of Ferro's reforms. However, the judge who authored the opinion was allowed to retire and keep her pension—provoking another irate trucker to kill seven people and himself on the second anniversary of her retirement.[12]

In response, Petitioner proposed an automatic system with rest break rules similar to Section 11090

Model-Test.pdf

9 www-nrd.nhtsa.dot.gov/Pubs/811628.pdf

10 www-nrd.nhtsa.dot.gov/Pubs/811158.pdf

11 www.oig.dot.gov/library-item/35549

12 Lucinda Holt, Manny Fernandez, "West Texas Shooting Spree Terrorized Two Towns and Killed 7," *New York Times*, 9/1/2019

of the California Labor Code.[13] This was enacted as the *Commercial Motor Vehicle Safety Enhancement Act of 2012*—requiring the agency to equip trucks with electronic logging devices "capable of recording a driver's hours of service and duty status accurately and automatically," 49 U.S.C. § 31137(f)(1)(A)—removing language permitting the devices to "be used to monitor productivity of the operators" (31137(a)-superceded). However, the agency failed to redact 49 C.F.R. § 390.36(b)(2) allowing carriers "to monitor productivity [or strike participation] of a driver." The proposed device had no tracking ability.

In defiance of the new law, on December 16th 2015, the agency re-promulgated (with minor changes) an electronic logging devices rule vacated by the 7th Circuit because the agency failed to ensure that electronic monitoring would not be used to harass drivers. 49 C.F.R. § 395.8 et seq., 80 F.R. 78383. See *Owner-Operator Independent Drivers Ass'n v. FMCSA*, 656 F.3d 580 (7th Cir. 2011). Although the agency claimed that the purpose of monitoring citizens with tracking devices was to improve safety, the effect of electronic monitoring was to preempt California's meal and rest break rules rather than extend them nationwide. Instead of receiving additional breaks, truckers could be ordered to drive up to eight hours without a break, then be ordered to remain for thirty minutes at a place of the employer's choosing to prevent them from participating in any protests. This resulted in 28% more truckers being killed on the job in 2017 than in 2014 and 68% more than in 2009[14] because they forced truckers to race

---

[13] www.truckingvideo.com/hos.htm

[14] Fatality Analysis Reporting System, NHTSA,

against the clock to arrive at a safe pace to park before running out of driving time, violating speed limits whenever delayed by weather or traffic, then fall asleep instantly at a time determined by a computer. Other than hypnotism, the only known method for human beings to sleep on command is to take powerful sedatives or drink dangerous amounts of alcohol. Not surprisingly, alcohol related truck fatalities jumped sixty percent in just one year when this politically motivated rule went into effect in 2017—harming both highway safety and driver health.[15]

Nevertheless, in contradiction of its 2008 Determination, on December 21st 2018, the agency issued a new Determination preempting California's meal and rest break laws. 83 F.R. 67470. Ignoring both court orders, on Sept. 12th 2019, the agency ordered the hours of service rules twice vacated by the DC Circuit "restored to full force and effect." 84 F.R. 48079. At the height of the Coronavirus epidemic on June 1st 2020, the agency ruled that "the 2005 rule would not have any effect on these potential health issues," 85 F.R. 33403, even though the agency found additional rest provided "health benefits in the form of decreased mortality risk based on decreases in daily driving time, and possible increases in sleep." 85 F.R. 33447. An additional 1,457 truckers and 3,242 motorists were killed on the highways since tracking devices were first required in 2009.[14]

---

www-fars.nhtsa.dot.gov

[15] NHTSA, *2017 Fatal Motor Vehicle Crashes: Overview*, p.5

REASONS FOR GRANTING THE WRIT

The 9th Circuit has entered a decision that has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

A. A half-million Americans have lost their lives due to a coronavirus epidemic attributable in part to long haul trucking. Dependence on obsolete 18-wheelers for food delivery decades after truckers decided to replace them with modern intermodal vehicles has prevented local governments from shutting down highways to prevent its spread. This court ruled, "due process of law requires an evaluation based on disinterested inquiry pursued in the spirit of science, on a balanced order of facts [and] the detached consideration of conflicting claims." *Rochin v. California* 342 U.S. 165 at 172 (1952). As Justice Powell wrote for a unanimous court in *Youngberg v. Romeo,* 457 U.S. 307 at 321 (1982) (quoting 644 F.2d at 178):

> "If there is to be any uniformity in protecting these interests, this balancing cannot be left to the unguided discretion of a judge ... the Constitution only requires that the courts make certain that professional judgment in fact was exercised (internal quotes omitted) ...By "professional" decision-maker, we mean a person competent, whether by education, training or experience, to make the particular decision at issue." *Id.* at 323 n.30.

Congress made clear in *The Motor Carrier Safety Improvement Act of 1999* that only "an individual

with professional experience in motor carrier safety" may make preemption determinations. 49 U.S.C. § 113(c). The court's *Chevron* Part I analysis should therefore have ended when Respondents failed to dispute allegations that court orders were ignored by a person lacking professional experience who failed to comply with all of the legal requirements of rulemaking. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The 9th Circuit's conclusions that it need not "address these arguments, as IBT Local 2785 failed to argue these issues with any specificity in [its] briefing" even though their Intervenor did so, or "[t]hese issues are also not part of the FMCSA's preemption determination and are thus not before us" (*see* App. p. 35 n.5), reveal that the panel did not satisfy the due process requirement that it "make certain that professional judgment in fact was exercised" as required in *Youngberg*. A court is not supposed to "vacate various federal regulations" (*id.*) when Congress requires "professional experience" under 49 U.S.C. § 113(c) or "clear evidence" that Congress intended preemption under Executive Order 13132; it is supposed to enforce existing court orders. A court cannot vacate a regulation that has already been vacated by another court. Granting *Chevron* Part II deference to a twice-convicted drunk driver posing as a motor carrier safety professional[16] creates the same appearance of corruption that

---

[16] September 1987, Fairfax County, Virginia; August 1989, Nassau County, New York. When Federal Motor Carrier Safety Administrator Raymond P. Martinez was supposedly acquiring an above-average safety record driving 18-wheelers, he was actually working as an assistant to First Lady Nancy Reagan.; James Jaillet, *Overdrive*, November 6th 2017.

stopped a nomination to this Court,[17] provoking the deadly reprisals described above. A circuit court ignoring another circuit court's orders calls for an exercise of this Court's supervisory power.

B. The National Highway Traffic Safety Administration's *Traffic Safety Facts—Large Trucks* fact sheets[18] show that in states with meal and rest break laws,[19] single vehicle trucker fatalities, such as running off the road or falling asleep at the wheel, increased by one-third after tracking devices were required until they matched the high rates seen in non-rest-break states—killing an additional 50 truckers per year. In California, single vehicle trucker fatalities more than doubled 118% between 2014 and 2017, confirming that its meal and rest break laws had a significant safety benefit—reducing trucker fatalities sixty percent during the nine years they were being enforced. Yet, they were preempted in violation of 49 U.S.C. § 31141(c)(4)(A), which provides that "the State law or regulation may be enforced unless [it] has no safety benefit."

It is well known that the Tea Party Movement began with a nationwide trucker strike on the 200th anniversary of the Boston Tea Party in 1973.[20] On

---

[17] DC-14-90026, DC-14-90027; DC-15-90023, DC-15-90024

[18] DOT HS 812 150; DOT HS 812 279; DOT HS 812 373; DOT HS 812 497; DOT HS 812 663 (see state tabulations)

[19] California, Colorado, Connecticut, Delaware, Illinois, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, Tennessee, Vermont, Washington, and West Virginia

[20] Mike Parkhurst, *Trucker Wars*, Hollywood Continental Films, 2013

the 242nd anniversary of the Boston Tea Party, December 16th 2015, the agency required trucks to be equipped with tracking devices that forced truckers to skip state mandated meal and rest breaks, increasing trucker fatalities sixty-eight percent (*see* above p. 8). 49 C.F.R. § 395.8 et seq., 80 F.R. 78383. Thus, the real reason for preempting California's meal and rest break laws was to prevent protests—not to improve safety. Citizens monitored by tracking devices who are forbidden by their employers to stop to rest are unable "peaceably to assemble" as guaranteed by the First Amendment. Regulations promulgated under Section 31136 must comply with a Congressional mandate: "At a minimum, the regulations shall ensure that ... the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators." 49 U.S.C. § 31136(a)(4). As the DC Circuit ruled, "[i]ts failure to do so, standing alone, requires us to vacate the entire rule as arbitrary and capricious." *Public Citizen* at 1217.

Numerology is normally a part of astrology, not law. However, when courts do certain things on certain dates, one can be reasonably certain that someone in the courthouse is trying to send a message, such as when the Commerce Committee Chairman was convicted of failing to report gifts on Petitioner's birthday (*see* above p. 5), or when the 7th Circuit published its opinion in a related tracking devices case on Halloween (cert. denied 15-1263; 16-1228). While the actions of the 9th Circuit are not as egregious as those of the 7th Circuit in suppressing evidence, such as serving documents at Petitioner's home knowing it would be impossible to timely receive them, or requiring Petitioner to block a road in front of a post office by denying truckers the use of

the court's electronic case filing system, or the DC Circuit denying standing to truckers; to issue its Mandate on Good Friday (*see* Appendix p. 42), the traditional anniversary of the death of Christ, in response to the reprisal against Jews (*see* above p. 5) has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

C. This Court has recognized "that deliberate indifference is egregious enough to state a substantive due process claim." See *County of Sacramento v. Lewis,* 523 U.S. 833 (1998):

> "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level ... Historically, this guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property" (quoting *Daniels v. Williams*, 474 U.S. at 331).

Justice Rehnquist wrote in *DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 200 (1989):

> "it is the State's affirmative act of restraining the individual's freedom to act on his own behalf—through...restraint of personal liberty —which is the 'deprivation of liberty' triggering the protections of the Due Process Clause."

In *Rochin*, a stomach pump was used to extract a confession in the same manner that tracking devices are used to extract confessions from truckers who

choose to stop to eat, rest, or protest without their employer's permission. The twice-vacated rule found under 49 C.F.R. § 395.3(a) ("nor shall any such driver drive...unless the driver complies with the following requirements") is an individual mandate that violates "liberty interests in freedom of movement and in personal security [that] can be limited only by an overriding, non-punitive state interest." *Youngberg* at 313 (internal quotes omitted). Thus, when Congress stipulates that rules must be *needed* under 49 U.S.C. §§ 31136(c)(2)(B) & 31502(b)(2), the burden of proof falls on the agency, not the petitioners. It is difficult to understand why hours of service rules are needed when modern intermodal vehicles[21] can dramatically reduce the hours truckers need to work. The agency responded to Petitioner's petition to replace obsolete 18-wheelers with modern vehicles by replacing truckers with foreign workers (*see* above p. 4). The only historical precedent for this was in 1934 when the Boeing company decided to replace rickety biplanes with modern airliners and President Roosevelt transferred its airmail contracts to the Army, causing a dramatic increase in crashes —which World War I Ace Eddie Rickenbacker called "legalized murder."[22] See *Public Citizen* at 1220 ("This directive, in our view, required the agency, at a minimum, to collect and analyze data on the costs and benefits").

D. The 9th Circuit did not address the apparent conflict with its 103-year-old precedent in *United States v. Southern Pacific Co.* 245 Fed. 722 (9th Cir.

---

[21] US Patents 6494313, 6776299, 6840724, 6910844, & 7070062
[22] *Chronicle of Aviation*, JOL, 1992, p. 315

1917) that a temporary relief from duty where employees had to remain in the vicinity was a form of on-duty time. This flows from the this Court's 107-year-old precedent in *Missouri K.&T. Ry. Co. v. United States.* 231 U.S. 112 (1913) that "[e]mployees, though inactive, are none the less on duty...where they are under orders, liable to be called upon at any moment, and not at liberty to go away." The 9th Circuit has not explained why wages no longer must be paid to drivers for this type of "on duty" time when they are "not at liberty to go away" and likely to be "called upon at any moment" by customers or dispatchers, such as when they are "under orders" to take a mandatory 30-minute break from driving under 49 C.F.R. § 395.3(a)(3)(ii). The agency recently acknowledged that such "on duty" breaks made some drivers "more tired." 85 F.R. 33416.

The Secretary's own statistical evidence shows that preemption of state meal and rest break laws actually occurred on December 16th 2015, 80 F.R. 78383, long before California's civil penalties and wage orders were preempted on December 21st 2018. 83 F.R. 67470. Thus, the present case in practical effect is purely financial, requiring a trial by jury. In claiming jurisdiction under 49 U.S.C. § 31141(f)(2) to resolve what is essentially a wage dispute (*see* App. pp. 14, 17), the 9th Circuit is in conflict with this court's decision in *Tull v. United States*, 481 U.S. 412, 421 n.5 (1987) holding that the 7th Amendment applies to cases involving civil penalties to abate interferences with public health or safety.

The 9th Circuit's ruling that the FMCSA reasonably determined that a State law "on commercial motor vehicle safety" is one that "imposes requirements in an area of regulation that is already addressed by a regulation promulgated under [sec-

tion] 31136" (*see* App. pp. 15, 19, 23), is unsupported by citation of any federal regulation requiring employers to provide "off duty" breaks as required under California law wherein drivers are "at liberty to go away," not "under orders," or "liable to be called upon at any moment." Nor has The 9th Circuit cited any instance of California regulating a commercial motor vehicle by requiring safety devices to be installed or placing a vehicle out of service to enforce its meal and rest break laws. California's remedies are purely financial, having nothing at all to do with the operation of commercial motor vehicles. In failing to include any discussion about why vehicles owned and operated by self-employed truckers are not being regulated, the 9th Circuit failed to differentiate between commercial motor vehicle regulations under Section 31136, which do not involve civil penalties, and motor carrier regulations promulgated under 49 U.S.C. 31502 that do, which fall outside the Secretary's jurisdiction for preemption under 31141.

The 9th Circuit's *Chevron* Part I analysis failed to address the claim that in granting jurisdiction to courts of appeals and removing all references to the "Commercial Motor Vehicle Safety Regulatory Review Panel" originally required under *The Motor Carrier Safety Act of 1984*, Pub. L. No. 98-554, title II, 98 Stat. 2829, 2832 (49 U.S.C. § 31131-superceded; Pub. L. No. 103-272, 108 Stat. 745); Congress expressed a clear intent to limit agency jurisdiction to laws not covered by the 7th Amendment. Now, truckers are not only treated unequally compared to other California workers, they are prevented from recovering damages under 42 U.S.C. 1985.

E. When *Rochin* was decided in 1952, this Court would normally grant about two hundred of the five

hundred petitions received each year. Today, the circuit courts have been so corrupted by cronyism that this Court grants only a small fraction of the thousands of petitions it receives annually. To end the long-standing practice of suppressing evidence[23] by abusing courts of appeals as courts of first impression with non-randomly-assigned politically connected judges whose orders are simply ignored if they do not do what they are told and are rewarded with Supreme Court nominations if they do, this Court should grant this petition to broadly extend the due process standard stated in *Rochin* and *Youngberg* to all government agencies.

The Federal Motor Carrier Safety Administration did not exist when the transfer of authority from the Interstate Commerce Commission to the National Transportation Safety Board (both quasi-judicial bodies equivalent to a jury for Seventh Amendment purposes) occurred in 1966, therefore, appellate courts are not constitutionally adequate to review its administrator's decisions. The *Department of Transportation Act* states that only authority "specifically assigned to the Administrator...may be reviewed judicially...in the same way as...before the transfer or assignment." Pub. L. 89-670, 80 Stat. 931, 49 U.S.C. § 351(a). See *Aulenback v. FHWA*, 103 F.3d 156 (D.C. Cir. 1997) (holding that courts of appeals have jurisdiction to review actions of Department of Transportation agencies only if the action is taken pursuant to authority that was transferred from the Interstate Commerce Commission); *Owner-Operator Independent Drivers Ass'n v. Pena*, 996 F.2d 338 (D.C. Cir. 1993) (same). Authority in Section 31141

---

[23] Robert Caro, *Means of Ascent*, Knopf 1990, p.380

was not specifically assigned by Congress to the Federal Motor Carrier Safety Administrator. Appellate jurisdiction under Section 31141(f)(1) should therefore be limited to safe design and construction of commercial motor vehicles under Section 31136, not regulations of the personal lives of citizens promulgated under Sections 31502 and 390.36(b)(2) ("to monitor productivity [strike activity] of a driver") shown to have no safety benefit. The threshold amount triggering 7th Amendment protections is far exceeded by the loss of additional pay allowed under California law if meals are skipped, not to mention the approximately thirty percent reduction in wages resulting from truckers' inability to bargain collectively[24]—which benefited the Commerce Committee Chairman not convicted of receiving gifts (Presidential Candidate John McCain) who's wife owned a trucking company that distributed beer.

It is difficult to imagine by what psychic power an unskilled person could learn the trade secrets of truckers so as to be able to perform a valid cost-benefit analysis without being apprenticed in the trade. Because safety determinations require special expertise not possessed by ordinary persons, not unlike courts of law, when an impostor impersonates a safety professional (or a judge), an impostor's decision does not carry the same weight as a valid court order to be appealed and is in fact just an ordinary tort. Therefore, to maintain impartiality in the spirit of science, *Rochin* at 172, and make certain that professional judgment is exercised, *Youngberg* at 321, a court should defer to an agency under *Chevron* Part II only if a decision-maker possesses

---

[24] Michael Belzer, *Sweatshops on Wheels*, Oxford, 2000, p.122

professional experience. If a political appointee lacks such expertise, then a court's *Chevron* Part I analysis should end when Congress makes clear that professional experience is required. One may reasonably argue that the intent of Congress is that professional judgment is always required.

CONCLUSION

This petition should be granted to make certain that professional judgment is exercised in every government agency.

William B. Trescott
26276 Farm to Market Road 457
Bay City, Texas 77414
(979) 244-3134