

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ESTATE OF GABRIEL MIRANDA, JR.; MARIA FUENTES,
Individually and as Representative of the ESTATE OF GABRIEL
MIRANDA, JR.; GABRIEL MIRANDA, Individually and as
Representative of the ESTATE OF GABRIEL MIRANDA, JR.,
Applicants,

v.

NAVISTAR, INCORPORATED; NAVISTAR INTERNATIONAL
CORPORATION; IC BUS L.L.C.; IC BUS OF OKLAHOMA L.L.C.,
Respondents.

ON APPLICATION FOR EXTENSION OF TIME TO FILE PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

To the Honorable Justice Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Pursuant to Rules 13.5, 21, 22, and 30.2 of this Court, Petitioners Estate of Gabriel Miranda, Jr.; Maria Fuentes, Individually and as Representative of the Estate of Gabriel Miranda, Jr.; Gabriel Miranda, Individually and as Representative of the Estate of Gabriel Miranda, Jr. respectfully request that the time to file a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit be extended for 60 days, to and including June 13, 2022.

The Court of Appeals for the Fifth Circuit issued an opinion on January 12, 2022 (see Appendix A). Applicants are filing this application at least ten days before the current due date of April 12, 2022. See S. Ct R. 30.2. This Court would have jurisdiction over the judgment pursuant to 28 U.S.C. § 1254(1).

BACKGROUND

On November 14, 2016, a school bus manufactured by Navistar, Incorporated; Navistar International Corporation; IC Bus L.L.C.; and IC Bus of Oklahoma L.L.C. (collectively, “Navistar”) was carrying middle-school students on a field trip. While the bus was traveling on the highway, Gabriel Miranda, Jr., a 13-year-old eighth grader, opened the rear emergency exit door and exited the back of the bus onto the roadway to his death. This door was able to be unlatched and opened by very little force of only 0.8 lb.

On January 12, 2022, based on the impossibility test of conflict preemption, the Fifth Circuit entered its judgment to affirm the district court’s summary judgment decision dismissing Miranda’s lawsuit that required Navistar to equip the rear emergency exit door with an automatic in-motion speed-activated lock when it would be too dangerous to exit. The Fifth Circuit concluded that Miranda’s in-motion lock conflicts with Federal Motor Vehicle Safety Standard 217 (“FMVSS 217”), which “requires that manufacturers equip school buses with emergency exits that can be manually opened by a single person when he or she uses the simple fail-safe ‘release mechanism.’”

REASONS FOR GRANTING AN EXTENSION OF TIME

Applicants' time to file a petition for a writ of certiorari should be extended by 60 days for the following reasons:

1. The record, in this case, is substantial. Additional time is necessary and warranted for counsel to prepare the petition for a writ of certiorari.
2. Applicants' counsel is lead counsel in a specially set jury trial scheduled on April 25, 2022 for a products liability case. Applicants' counsel is currently involved with preparations for the trial and cannot devote the necessary time to the writ before the current deadline of April 12, 2022.
3. The extension would not cause any meaningful prejudice on any party because, if this Court grants the petition, this Court will likely hear oral argument in the Fall of 2022 and issue its opinion in the October 2022 term regardless of whether an extension is granted.

CONCLUSION

For the above reasons, Applicants, Estate of Gabriel Miranda, Jr.; Maria Fuentes, Individually and as Representative of the Estate of Gabriel Miranda, Jr.; Gabriel Miranda, Individually and as Representative of the Estate of Gabriel Miranda, Jr., respectfully request that the time to file a petition for writ of certiorari in this matter be extended by 60 days, from April 12, 2022, through and including June 13, 2022.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2022

Lyle W. Cayce
Clerk

No. 21-40421

ESTATE OF GABRIEL MIRANDA, JR.; MARIA FUENTES,
INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF
GABRIEL MIRANDA, JR.; GABRIEL MIRANDA, INDIVIDUALLY
AND AS REPRESENTATIVE OF THE ESTATE OF GABRIEL
MIRANDA, JR.,

Plaintiffs—Appellants,

versus

NAVISTAR, INCORPORATED; NAVISTAR INTERNATIONAL
CORPORATION; IC BUS L.L.C.; IC BUS OF OKLAHOMA L.L.C.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:18-CV-00353

Before DAVIS, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

W. EUGENE DAVIS, *Circuit Judge*:

Plaintiffs-appellants, the estate and surviving parents of thirteen-year-old Gabriel Miranda, Jr. (“Gabriel”), brought this products liability action against defendants-appellees, Navistar, Inc., Navistar International Corp., IC Bus LLC, and IC Bus of Oklahoma L.L.C. (collectively “Navistar”), for the wrongful death of their son. Tragically, Gabriel fell to his death after opening

No. 21-40421

the rear emergency exit of a school bus while it was travelling at highway speed. Plaintiffs argue that defendants are liable under Texas law for their failure to include a safety device on the emergency exit in the form of an electronic locking mechanism that would prevent a person from opening the exit when the bus is moving at highway speed.

We conclude that the district court correctly dismissed this suit on the ground that a federal regulation promulgated by the National Highway and Traffic Safety Administration (“NHTSA”), Federal Motor Vehicle Safety Standard 217 (“FMVSS 217”), conflicts with and therefore preempts a state common law duty to include such an automatic lock. We agree with the district court’s reading of FMVSS 217 that a school bus manufacturer must outfit school buses with rear emergency exits that can be opened in only one way: by operating a manual release mechanism. Thus, it would be impossible to comply with the regulation while implementing the change argued for by plaintiffs. Accordingly, we AFFIRM.

I. BACKGROUND

This is a sad case. On November 14, 2016, Gabriel and other members of his eighth-grade class boarded a school bus for a field trip to the University of Texas-Rio Grande Valley in Edinburg, Texas. While travelling on Interstate 69, Gabriel opened the rear emergency exit and fell to the pavement below.¹ He suffered severe trauma to his head and was pronounced dead later that morning.

The school bus, a 2010 CE-Series, was designed, manufactured, and distributed by Navistar. The rear emergency exit of the school bus is

¹ Although not relevant to this decision, the parties dispute whether Gabriel’s death was accidental or intentional.

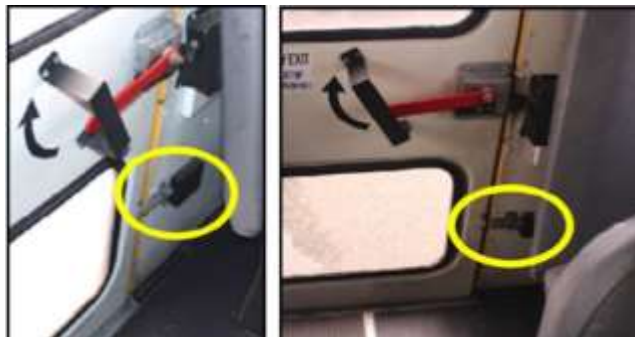
No. 21-40421

equipped with a release mechanism that allows the door to latch and unlatch, as shown below:



To open the emergency exit, a person must unlatch the door by pulling the red lever upward, and then push against the door.

The rear emergency exit also has a separate “vandal lock,” shown below:



The vandal lock is intended to prevent unauthorized access while the bus is not in use. It is a simple barrel bolt latch consisting of a steel bolt inside a sheath that is connected to the door frame. To engage the lock, the bolt slides into a steel ring that is connected to the door itself. When the lock is engaged, the engine starting system will not operate. Additionally, if the lock is engaged while the bus’s ignition switch is in the “ON” position, an audible alarm sounds at the rear exit and near the driver.

No. 21-40421

Plaintiffs filed this lawsuit in the district court on November 13, 2018. They alleged strict liability claims under Texas law on the ground that Navistar failed to equip the rear emergency exit with an adequate locking system.² Relying on the opinion of an expert witness, Rob Berriman, an automotive electronics engineer, plaintiffs contend that Navistar should have included an automatic in-motion lock on its school buses that would prevent a person from opening the rear exit when a bus is travelling at highway speed.

In his report, Berriman outlines three possible designs for a locking system that would engage at a set speed (as argued by plaintiffs, at 30 miles per hour).³ The simplest version, for which patents have existed since 1972, would take a real-time speed signal from the bus to trigger a lock mechanism. A more modern version of this design would use a speed signal to electronically trigger an electromagnetic lock or pneumatic bolt. Finally, Berriman proposes a “smart door” that uses accelerometers, inclinators, gyroscope, and GPS to unlock the door only under “safe speed conditions.”

Navistar moved for summary judgment, contending that federal law preempts plaintiffs’ state law claims. The district court granted the motion. Plaintiffs filed a motion for reconsideration under Federal Rule of Civil Procedure 59(e), and the district court denied the motion. Plaintiffs timely appealed.

² Plaintiffs also alleged that the school bus lacked an adequate warning system to alert the bus driver that someone was attempting to open the emergency door, and that the bus had inadequate warning stickers, placards, or other documentations to warn users about the hazards involved in operating the vehicle. The district court concluded that these claims were preempted, and plaintiffs do not argue on appeal that this ruling was erroneous.

³ Although Berriman does not opine as to the appropriate speed at which these locks should trigger, plaintiffs suggest 30 miles per hour in their briefing to this Court.

No. 21-40421

II. Discussion

A. Standard of Review

“We review the grant of a motion for summary judgment *de novo*, applying the same standard as the district court.”⁴ Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”⁵ A fact is material if it might affect the outcome of the suit, and a factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.⁶

B. Preemption

The premise of plaintiffs’ claims is that defendants had a common law duty under Texas law to include an automatic speed-activated locking mechanism on the bus’s rear emergency exit. The question before this Court is whether NHTSA’s regulation of school bus emergency exits, FMVSS 217,⁷ preempts that state law duty. Although this Court has previously considered a factually similar case, *Estrada v. Carpenter Body Works, Inc.*, we did not speak to the preemptive effect of FMVSS 217.⁸

There are three ways that a federal law may preempt a state law. First, express preemption occurs when Congress “adopts express language

⁴ *Moss v. BMC Software, Inc.*, 610 F.3d 917, 922 (5th Cir. 2010) (citation omitted).

⁵ FED. R. CIV. P. 56(a).

⁶ *Harville v. City of Houston*, 945 F.3d 870, 874 (5th Cir. 2019) (internal quotation marks and brackets omitted).

⁷ 49 C.F.R. § 571.217.

⁸ 987 F.2d 770 (5th Cir. 1993) (unpublished table decision) (holding that plaintiffs failed to carry their burden on summary judgment because they failed to refute the defendants’ expert testimony that an in-motion locking mechanism would contravene FMVSS 217).

No. 21-40421

defining the existence and scope of pre-emption.”⁹ Second, field preemption occurs when “Congress creates a scheme of federal regulation so pervasive as to leave no room for supplementary state regulation.”¹⁰ Finally, conflict preemption occurs “where it is impossible for a private party to comply with both state and federal requirements,” or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”¹¹

1. *Preemptive Effect of NHTSA’s Motor Vehicle Safety Standards*

With the National Traffic and Motor Vehicle Safety Act (the “Act”),¹² Congress delegated authority to the Department of Transportation (“DOT”) to prescribe motor vehicle safety standards.¹³ DOT in turn delegated authority to NHTSA to implement the statute.¹⁴ The Act contains an express preemption clause, which provides as follows:

When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.¹⁵

⁹ *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 109 (1992) (Kennedy, J., concurring).

¹⁰ *Id.* (citing *English v. Gen. Elec. Co.*, 496 U.S. 72, 78-79 (1990)).

¹¹ *Id.* (citing *English*, 496 U.S. at 79).

¹² 49 U.S.C. § 30101 *et seq.*

¹³ 49 U.S.C. § 30111.

¹⁴ 49 C.F.R. § 1.94.

¹⁵ 49 U.S.C. § 30103(b)(1).

No. 21-40421

Importantly, however, Congress included a savings clause which states that “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.”¹⁶

In *Geier v. American Honda Motor Co.*, the Supreme Court held that this express preemption provision does not preclude states—through common law—from imposing duties on vehicle manufacturers beyond what is required by federal law.¹⁷ In other words, the Act does not expressly preempt a state’s common law tort duties, even those that differ from the federal requirements.¹⁸ However, the *Geier* Court also held that ordinary conflict preemption principles apply.¹⁹ Thus, to the extent a state’s common law duty differs from the federal regulatory requirements, it is preempted if either (1) it would be impossible for a private party to comply with both state and federal law, or (2) the state law poses an obstacle to the accomplishment of the objectives and purposes of the federal rule.²⁰

2. *Preemptive Effect of FMVSS 217*

As noted, the first type of conflict preemption, impossibility, occurs when a private party physically cannot comply with both a federal and state law.²¹ As explained below, we conclude that plaintiffs’ claims are preempted because it would be impossible to include an automatic speed-activated lock and comply with FMVSS 217.

¹⁶ *Id.* § 30103(e).

¹⁷ 529 U.S. 861, 867-68 (2000).

¹⁸ *Id.*

¹⁹ *Id.* at 874.

²⁰ *O’Hara v. Gen. Motors Corp.*, 508 F.3d 753, 758 (5th Cir. 2007) (quoting *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 153 (1982)).

²¹ *Id.*

No. 21-40421

The primary bar to plaintiffs' claims within FMVSS 217 is S5.3.3.1, which provides, in full:

When tested under the conditions of S6., both before and after the window retention test required by S5.1, *each school bus emergency exit door shall allow manual release of the door by a single person*, from both inside and outside the passenger compartment, using a force application that conforms to S5.3.3.1(a) through (c) of this section, except a school bus with a GVWR of 10,000 pounds or less is not required to conform to S5.3.3.1(a). *The release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system.* When the release mechanism is not in the position that causes an emergency exit door to be closed and the vehicle's ignition is in the "on" position, a continuous warning sound shall be audible at the driver's seating position and in the vicinity of the emergency exit door.²²

The use of the term "manual" in S5.3.3.1's first sentence suggests that a "single person" must be able to open the door "by hand and not by machine."²³ Indeed, the second sentence expressly prohibits the use of "remote controls or tools," or reliance on the "vehicle's power system" for operating the "release mechanism."²⁴ Because the locks proposed by plaintiffs' expert are automatic, they are in direct conflict with FMVSS 217's "manual release" requirement. Further, because the devices rely on a separate speed signal, they conflict with the regulation's prohibition of "remote controls."²⁵

²² 49 C.F.R. § 571.217, S5.3.3.1 (emphasis added).

²³ *Id.*; *Manual*, MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10th Ed. 2001).

²⁴ 49 C.F.R. § 571.217, S5.3.3.1.

²⁵ *Id.*

No. 21-40421

Plaintiffs attempt to avoid S5.3.3.1's requirements by arguing that the prohibition on the use of remote controls or tools applies only to the "release mechanism," which they view as a separate mechanical device from their proposed lock. But this is a flawed reading of the regulation. On its face, the "manual release" requirement in the first sentence of S5.3.3.1 speaks to the "door," not just the "release mechanism."²⁶ Further, a different section makes clear that, upon "release," the door must be capable of being manually *opened*.²⁷ Specifically, S5.4.2.1(a) provides:

*After the release mechanism has been operated, each emergency exit door of a school bus shall, under the conditions of S6., before and after the window retention test required by S5.1, using the force levels specified in S5.3.3, be manually extendable by a single person to a position that permits [an opening of a specified dimension.]*²⁸

Thus, a single person must be able to manually operate the release mechanism²⁹—resulting in the door being "release[d]"—so that a person can manually extend the door.³⁰ Reading S5.3.3.1 and S5.4.2.1(a) together, FMVSS 217 requires that one person must be able to manually open the emergency exit (without relying on remote automated devices) by using the release mechanism.³¹

²⁶ 49 C.F.R. § 571.217, S5.3.3.1.

²⁷ *Id.* S5.4.2.1(a).

²⁸ *Id.* (emphasis added). The required dimension of the opening depends on the school bus's gross vehicle weight rating. *Id.* S5.4.2.1(a), S5.4.2.2.

²⁹ *Id.* S5.3.3.1.

³⁰ *Id.* S5.4.2.1(a).

³¹ *Id.* S5.3.3.1, S5.4.2.1(a).

No. 21-40421

Nor are we persuaded by plaintiffs' argument that the prefatory clause in S5.3.3.1—“[w]hen tested under the conditions of S6”³²—means that the manual release requirement only needs to be met when the bus is stationary during compliance testing. The term “stationary” is not listed among the S6 conditions. Rather, the relevant compliance testing conditions in S6 are that “[t]he vehicle is on a flat, horizontal surface,” the internal and external temperature is 70° to 85° Fahrenheit, and the internal fixtures of the bus are set up for normal use.³³ Strictly speaking, a moving bus would be “under the conditions of S6” as long as it is on a flat surface, at the appropriate temperature, and fitted for ordinary use.

Moreover, even if we read “stationary” into the S6 conditions, plaintiffs' construction of the regulation would render compliance testing pointless. If we adopt plaintiffs' view, a manufacturer could modify the exits in a way that makes them inoperable when a school bus is loaded with children, as long as the exits worked properly under the controlled environment of a compliance test. We do not construe the regulation to allow for such absurd results.³⁴

Although we decide this case on the basis of impossibility preemption, rather than any conflict with the object and purpose of FMVSS 217, we note that the policy behind the regulation supports our interpretation. In May 1988, a tragic accident occurred in Carrolton, Kentucky, in which 27

³² 49 C.F.R. § 571.217, S5.3.3.1. Similar language is contained in S5.4.2.1(a)'s provision requiring manual extension of the door. *Id.* S5.4.2.1(a).

³³ *Id.* S6.

³⁴ See *Gregory v. Mo. Pac. R.R. Co.*, 32 F.3d 160, 165 (5th Cir. 1994) (“It goes without saying that, in construing a statute or regulation, we seek to avoid imposing such [absurd] results.”).

No. 21-40421

passengers died after being trapped aboard a school bus.³⁵ In response to this and other similar accidents, NHTSA undertook a “comprehensive review” of FMVSS 217, and promulgated amendments in 1992.³⁶ In its commentary to those amendments, NHTSA noted “[a]n important factor in minimizing post-crash injuries and deaths on buses is the speed and ease with which occupants can evacuate the vehicle in an emergency.”³⁷ In our view, the requirement of a simple, manual release mechanism is consistent with these concerns because of the “speed and ease” it allows a student to operate an emergency exit and escape from the school bus. In contrast, an automatic speed lock carries a risk of mechanical failure, consequently increasing the risk that students will be trapped aboard school buses in emergencies.

In sum, FMVSS 217 requires that manufacturers equip school buses with emergency exits that can be manually opened by a single person when he or she uses the simple fail safe “release mechanism.”³⁸ The asserted state law duty to include an automatic speed lock conflicts with these requirements because it is impossible for a bus manufacturer to include an automatic lock on a door which must be manually operable. We therefore hold that the state law duty is preempted. Accordingly, we AFFIRM.

³⁵ Bus Emergency Exits and Window Retention and Release, 57 Fed. Reg. 49413, 49413 (Nov. 2, 1992).

³⁶ *Id.*

³⁷ *Id.*

³⁸ 49 C.F.R. § 571.217, S5.3.3.1, S5.4.2.1(a).