No. 21-627

In the Supreme Court of the United States

AIR TRANSPORT ASS'N OF AMERICA, INC., DBA AIRLINES FOR AMERICA,

PETITIONER,

v.

WASHINGTON DEP'T OF LABOR & INDUS.; JOEL SACKS, DIRECTOR OF THE WASHINGTON DEPARTMENT OF LABOR & INDUS.; ASS'N OF FLIGHT ATTENDANTS–COMMC'N WORKERS OF AMERICA, AFL-CIO,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATE OF WASHINGTON'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Airline Deregulation Act preempt a generally applicable Washington sick-leave law that has no significant impact on airline prices, routes, or services?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Statutes

Other Authorities

INTRODUCTION

This case satisfies none of the Court's criteria for granting certiorari. The unpublished opinion below faithfully applies this Court's cases, creates no conflict among lower courts, affects only one employer, and addresses an issue on which this Court has recently and frequently denied review. The Court should again deny review here.

Washington voters enacted a minimum wage and paid sick-leave law in 2016. Because the law's application turns largely on where employees are based, only a single airline is subject to the law: Washington-based Alaska Airlines.

Petitioner ("the Airlines") sued, claiming the law violates the Airline Deregulation Act (ADA), but the trial court rejected that argument, finding the law has no significant impact on airline routes, prices, or services. Pet. App. 37a. The court of appeals affirmed.

The Airlines now claim that the court of appeals ruling contravenes this Court's precedent, but this Court has never invalidated a generally applicable state law regulating wages or paid leave under the ADA or similar statutes. And the court of appeals faithfully applied this Court's precedent.

The Airlines also allege a shallow split among lower courts about how to interpret the ADA, but that is incorrect. The Airlines allege a real split only with decisions of the First Circuit, but the decisions they cite emphasized how intensely factbound they were, and the First Circuit has approvingly cited Ninth Circuit cases interpreting this statute. Any seeming tension is because of the differences in the state laws

being challenged and the different factual records before the courts. The cases that petitioner alleges created this split are nearly a decade old, yet this Court has denied certiorari in a dozen cases during that period alleging preemption on similar grounds. *See infra* p. 34 note 10.

In any event, the split alleged by the Airlines has no effect on the outcome of this case, making this a terrible vehicle to address this issue. The Airlines claim that the ADA preempts "any state law with a significant impact on prices, routes, and services," Pet. at 2, and that the Ninth Circuit has rejected this rule. But the district court explicitly found that in this case petitioner failed to prove that Washington's law "has a 'significant impact' on routes, prices, or services." Pet. App. 37a. Thus, even if this Court were to agree that there is a split of authority and agree that the Airlines are right about which side is correct, the outcome here would remain the same.

Because the alleged split has no impact on the outcome here, there is also no reason to hold this case until the Court decides whether to grant certiorari in recent cases raising similar issues where the Court has called for the views of the Solicitor General. *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127, 1141 (9th Cir. 2021), *petition for cert. filed sub nom. Virgin America, Inc. v. Bernstein*, No. 21-260 (U.S. Aug. 19, 2021); *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 656 (9th Cir. 2021), *petition for cert. filed*, No. 21-194 (U.S. Aug. 11, 2021). Even if the Court granted review in those cases (which it should not), the Court's resolution would not alter the outcome here.

The Court should deny certiorari.

STATEMENT OF THE CASE

A. Washington Voters Adopted the State's Paid Sick-Leave Law to Protect Workers, Families, and Public Health

In 2016, Washington voters passed an initiative granting paid sick-leave benefits to Washington employees, finding that "[t]he demands of the workplace and of families need to be balanced to promote public health, family stability, and economic security." Wash. Rev. Code §§ 49.46.200, .210.[1] Under the law, all Washington-based employees must accrue at least one hour of paid sick leave per forty hours worked. Wash. Rev. Code § 49.46.210(1)(a). Nothing in the law targets or mentions airlines or treats them differently from other employers. Employees may use sick leave for care of themselves and their families, for domestic violence leave, or due to school or business closures by public health officials. Wash. Rev. Code § 49.46.210(1).

Paid sick leave allows employees to recover more quickly from illness and avoid infecting others. CA9.ER.840, 844-45, 865; CA9.SER.047, 051. "Medical professionals and public health experts consistently recommend that sick people stay home until symptoms subside[.]" CA9.ER.864. The current pandemic underscores the social benefits of doing so. Employees are more likely to stay home when sick if they know they won't be disciplined for doing so. *See* CA9.ER.865, 867. Protected leave also enables an

[1] The last publication of the Washington Revised Code was in 2020.

employee to see a doctor for early intervention or preventive care, allowing better health outcomes and reduced medical costs. CA9.ER.865, 873.

Paid sick leave is especially important for workers whose jobs require them to interact with many others, like flight attendants. Airline executives uniformly agree that flight crew must *not* fly while sick. CA9.SER.014, 017-18, 024, 103, 137-39. The nature of flight attendants' jobs increases the risks of contracting and transmitting illness. Pet. App. 34a. Flight attendants are especially vulnerable to contracting illnesses due to confined working quarters, continual close contact with passengers, an environment of recirculated air, irregular work schedules, and interrupted sleep patterns. *See* CA9.ER.864, 870-71. Flight attendants also pose risk for community spread of illness through the nature of their duties, requiring them to move throughout the aircraft, interact closely with passengers, and handle items handled by passengers. CA9.ER.864, 871.recent study suggests that sick flight attendants are 6.6 times more likely than a sick passenger to infect someone else on a flight. CA9.ER.864.

It is particularly important for sick employees to remain home during the pandemic. The Washington Department of Health requires at least five days of isolation for employees who contract COVID-19.[2] Public officials direct sick people to stay

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[2] Wash. State Dep't of Health, *Isolation and Quarantine for COVID-19*, https://www.doh.wa.gov/Emergencies/COVID19/CaseInvestigationsandContactTracing/IsolationandQuarantineforCOVID19 (last visited Jan. 25, 2022).

home when sick. The CDC also directs people with COVID-19 to stay home and not travel.[3] Failing to follow advice against travel when sick "prolongs recovery and spreads disease." CA9.ER.864. But without protected leave, employees are more likely to work while sick, harming their recovery and increasing the risk of community spread. *See* CA9.ER.840, 844-45, 867-68; CA9.SER.047, 051. While the COVID-19 pandemic has underscored the risks of discouraging employees from taking time off work for illness, this is nothing new. Approximately twenty-six million employed Americans were infected at the height of the 2009 worldwide H1N1 pandemic, of which seven million were infected with the H1N1 virus by coworkers coming to work sick. CA9.ER.869. Experts have concluded that air travel caused the spread of SARS in 2003 and H1N1 in 2009. CA9.ER.870-71.

Paid-and-protected-leave laws not only benefit employees and the public, but also employers. Such laws lead to "higher morale and productivity, less absenteeism, and lower rates of turnover." CA9.ER.875. Adequate ability to take sick leave also leads to better employee retention and increased profits. CA9.ER.875. And because staying home when sick helps prevent the spread of disease, employers also avoid costs associated with ill staff members, which also benefits the State by reducing burdens to state-funded workers' compensation systems. CA9.ER.876.

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[3] Ctrs. for Disease Control & Prevention, *COVID-19: Travel* (updated Jan. 10, 2022), https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html.

B. Washington's Sick-Leave Law Has at Most Imperceptible and Attenuated Effects on Airline Prices, Routes, or Services

Washington's sick-leave law affects only one employer and imposes minimal new obligations on the company. More generally, expert testimony and quantitative data show that sick-leave laws like Washington's have trivial, if any, impacts on prices, routes, or services.

1. Washington's law applies to only a single airline, Alaska Airlines, and imposes only minimal new duties on the company

The record here shows Alaska Airlines is the only airline subject to Washington's sick-leave law. CA9.ER.964.

To determine if Washington law applies to an employee, the Washington Department of Labor and Industries applies the Washington-based employee test. Pet. App. 8a, 25a. That test examines whether the employee has the "most significant relationship" with Washington in comparison with other jurisdictions. CA9.ER.962; CA9.SER.220; *see* Am. Law Inst., *Restatement (Second) of Conflict of Laws* § 9 (1971); *Bostain v. Food Express, Inc.*, 159 Wash. 2d 700, 721, 153 P.3d 846 (2007); *Burnside v. Simpson Paper Co.*, 123 Wash. 2d 93, 100, 864 P.2d 937 (1994); *see* Pet. App. 15a-16a.

Washington considers Alaska Airlines' flight attendants to be covered by Washington law even though they spend a portion of their time in other jurisdictions because these employees are

most connected to Washington. CA9.SER.030-032; Pet. App. 16a. Washington has not reached the same conclusion as to employees of any other airline. CA9.SER.961.

The new law imposes minimal obligations on Alaska Airlines beyond what its existing policies provided, though these small changes offer important benefits to workers and public health. For example, even before enactment of Washington's law, Alaska Airlines provided paid sick leave to virtually all of its flight crew employees. Pet. App. 5a. While Alaska Airlines previously required 180 days of probationary employment before leave could be taken, Washington's new law applies after 90 days of employment, ensuring that newer employees are not required to work while ill. Wash. Rev. Code § 49.46.210(1)(d); CA9.SER.042-43.

Before the law, Alaska Airlines did not discipline its pilots for using sick leave, but did discipline flight attendants for taking sick leave by assessing "points." CA9.SER.044, 879; Pet. App. 13a. An accumulation of points leads to discipline or termination. CA9.SER.149, 044. Such disciplinary systems create incentives to work while ill to avoid accruing "points." *See* CA9.ER.865, 867. The new law addresses this problem by prohibiting employers, like Alaska Airlines, from disciplining an employee simply for taking leave authorized by law. Wash. Rev. Code § 49.46.210(3).

While Washington's sick-leave law prohibits an employer from disciplining an employee for using sick leave while ill, nothing in the law prohibits an employer from imposing discipline for improper

or unauthorized use of sick leave. CA9.ER.969. The law also allows an employer to require reasonable notice from employees before taking leave. Wash. Rev. Code § 46.46.210(1)(f). While the law restricts employers from requiring medical verification from the employee until an employee has been absent from work for three workdays, Wash. Rev. Code § 49.46.210(1)(g), this rule will have no impact on Alaska Airlines because the company has a policy of not requiring doctors' notes as a general principle. CA9.SER.143-44; Pet. App. 14a.

2. State paid-and-protected-leave laws do not significantly impact prices, routes, or services

For decades, airlines have operated in a regulatory environment of differing national, state, and local pay protections and leave laws, and there is no credible evidence that state paid-leave laws significantly impact airline prices, routes, or services.

For example, since 1988, Alaska Airlines has complied with Washington's Family Care Act, which allows employees to use existing leave to care for sick family members without discipline. Wash. Rev. Code § 49.12.270; 1988 Wash. Sess. Laws 1094 (ch. 236, § 1); *see also* CA9.SER.134, 147-48. Alaska Airlines has admitted that enactment of the law caused no operational difficulties for the airline and that it has not closed any flight crew base, changed any route, or increased any fare due to compliance with the law. CA9.SER.056-57, 059, 134, 136. Nor has Alaska Airlines identified increased delay as an operational impact of its compliance with the family-care sick-leave law. *See* CA9.ER.262-92.

Other airlines similarly report insignificant impacts of complying with state sick-leave laws. For example, American Airlines follows Massachusetts' and Los Angeles' paid-and-protected-leave laws and has a system of tracking the requirements of these laws. CA9.SER.097-100, 104-05. American Airlines assesses no disciplinary points to Massachusetts flight crew for sick-leave use. CA9.SER.107-08. Yet American Airlines' vice president of operations and crew performance, Charles Schubert, was unaware of sick leave usage causing American Airlines to close any flight crew base, change any route, or increase any fare. CA9.SER.409-10; *see also* CA9.SER.091-92. According to Mr. Schubert, American Airlines does not consider the economics of sick leave when deciding where to fly: "It is not germane to the conversation. It's not going to have an impact as to where we fly or where we don't fly." CA9.SER.401.

Southwest Airlines has also developed tools to handle compliance and track leave for different jurisdictions. CA9.SER.160, 416-17. Although Southwest Airlines complies with sick-leave laws in Baltimore, Oakland, Atlanta, and Los Angeles, its senior director of crew support and in-flight operations could not identify any operational impacts related to compliance with any jurisdiction's sick-leave laws, and as such, did not identify that compliance with existing sick-leave laws caused delay or cancellations. CA9.ER.247-55; CA9.SER.157, 418-21. Similarly, he could not identify any decision by Southwest Airlines not to fly a particular route because of application of a particular jurisdiction's sick-leave law. CA9.SER.154, 159, 416.

United Airlines likewise has not reported that compliance with state sick-leave laws has caused operational impacts such as delays or cancellations. *See* CA9.ER.524-45. Nor has it attributed any base closures, fare changes, or route changes to compliance with sick-leave laws. CA9.SER.178, 183-84. United Airlines does not supply data about sick-leave use to those in charge of setting fares. CA9.SER.174-75, 185.

After reviewing the data from several airlines, long-time airline expert Robert Mann concluded that "airlines are successfully managing crew resources under the auspices of differing state and local leave laws." CA9.SER.494-95. "[A]irlines operate across the nation and the world, and have adapted to many different wage and hour laws, labor protective practices, minimum wage, and taxing laws across those jurisdictions. Yet the airline industry continues to thrive . . . ." CA9.SER.490; *see also* CA9.SER.440.

The Airlines' expert likewise could not identify any current problems from Alaska, American, Southwest, or United due to compliance with state paid-leave laws. *See* CA9.ER.474. Instead, he opined only that there could be future negative effects from such laws. CA9.ER.474. Similarly, none of the airlines have identified any concrete difficulty in identifying the applicable law, or any burden in applying Washington's sick-leave law to Washington-based employees.

3. Delays caused by alleged sick-leave abuse or short calls are "virtually imperceptible"

Airlines have dealt with varying state laws governing use of sick leave for years and have

established strategies to address flight crew absences, including for managing absences for "short calls." CA9.SER.161-62, 485-89. Regardless of sick-leave laws, "call outs tend to spike on weekends, holidays, and the days before and after weekends and holidays." Pet. 11; *see also* CA9.SER.161-62, 485-89. Airlines allocate resources accordingly.

Airlines, for example, often replace sick crewmembers with healthy flight crew from their reserves and other sources, and use sophisticated tools to anticipate reserve levels and manage scheduling demands. CA9.SER.463-65, 102, 155-56, 186, 212-13. For example, an airline may increase its number of reserve flight crew, use managers to cover shifts, or move personnel to different bases to cover projected absences. CA9.ER.240; CA9.SER.167-69, 214; Pet. App. 32a.

As expanded sick-leave laws have taken effect across the country, impacts on airline operations have been virtually non-existent. For example, the Airlines' own expert concluded that after New York adopted a paid sick-leave law in 2015, there was no statistically significant impact on flight delays for Virgin America for over two years. CA9.SER.227, 285-86, 290. While the same expert found a 1.2 percent increase in delays for a few months starting two years after the law took effect, this increase in delays coincided with a period of turmoil at Virgin America because of the merger of Virgin America and Alaska Airlines and Alaska Airlines' decision to cut reserve pools and close the flight attendant base in New York. Pet. App. 31a. Where airlines have alleged delays caused by paid sick-leave laws, the same pattern has held true: increases in delays coincide not with new laws taking

effect, but with disruptions like labor disputes or peaks in flu season. CA9.SER.314-15, 482-85.[4]

Allegations of increased delay also must be considered in context. Nearly three million passengers fly per day in the United States,[5] and airlines have long operated at overall delay rates of 15-20 percent. Pet. App. 31a. In part for these reasons, Mr. Mann, reported that the Airlines' claimed delay "would be virtually imperceptible." CA9.SER.343. Because of longstanding policy decisions by the Airlines that have nothing to do with state leave laws, "[o]ver a period of decades, the American flying public has become conditioned and habituated to airline flight delays, and tolerates flight delays for all sorts of reasons, with wide variability in flight-by-flight on-time performance." CA9.SER.344. In other words, airlines have long tolerated delays based on their own economic decisions, building such delays into their business models. CA9.SER.438, 448-51.

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[4] For example, the Airlines offer the anecdotal opinion of an American Airlines executive who attributed increased sick-leave usage to Massachusetts' sick-leave law. Pet. 15; CA9.ER.239; CA9.SER.112. But the executive could not quantify this increase and conceded that Charlotte, a city with no sick-leave law, also showed a notable increase in sick leave during the same period. CA9.SER.113-14. The Airlines also point to ground operations in Los Angeles (Pet. 15-16), but problems there were attributed to a long-standing labor dispute (CA9.SER.482-85), and did not involve air flight operations.

[5] Fed. Aviation Admin., *Air Traffic by the Numbers* (*last modified* Nov. 2, 2021), https://www.faa.gov/air_traffic/by_the_numbers/.

C. The District Court and Court of Appeals Ruled that the Airlines Could Not Demonstrate Washington's Sick-Leave Law Causes Significant Impacts to Prices, Routes, or Services under the Airline Deregulation Act

The Airlines sued Washington to enjoin enforcement of Washington's sick-leave law. Pet. App. 11a. The district court granted summary judgment to Washington. Pet. App. 12a.

The district court found that the ADA did not preempt Washington's law because the airlines failed to "show that [Washington's law] has a 'significant impact' on routes, prices, or services." Pet. App. 37a (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008)).

The district court ruled that, given the scant and short-term increase in any delays experienced by Virgin America in New York, there was no evidence that sick-leave laws substantially increased delay. Pet. App. 37a-38a.

The district court observed that, to the extent that Washington's law "may have some impact on sick leave abuse, the Airlines have tools to feasibly mitigate these effects." Pet. App. 32a. It noted that the Airlines currently tolerate a 15-20 percent delay rate for a variety of reasons, and to make sure delays are not pushed beyond that range, the Airlines analyze sick-leave trends and allocate resources accordingly. Pet. App. 32a. "For example, the Airlines may increase the number of reserve flight crew, prohibit flight attendants from trading trips, or, in extreme situations, offer pay incentives for employees to cover

for absent coworkers." Pet. App. 32a. The district court also rejected the Airlines' commerce clause claim. Pet. App. 32a-33a.

The court of appeals affirmed in an unpublished memorandum opinion. Pet. App. 9a. The Airlines raised an ADA argument in four pages at the end of their sixty-one page opening brief. Given this cursory argument, the unpublished decision unsurprisingly did not analyze ADA preemption law in detail, but followed this Court's established law in *Morales* and *Rowe*, 552 U.S. at 370-71, as well as Ninth Circuit law in *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 645 (9th Cir. 2014), *cert. denied*, 575 U.S. 966 (2015), holding that "[s]tate laws that affect rates, routes, or services in 'too tenuous, remote, or peripheral a manner' are not preempted." Pet. App. 5a (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 390 (1992)). It noted that generally applicable labor regulations that apply to airline employees in the same way that they apply to all members of the public are typically "too tenuously related to airlines' services to be preempted." Pet. App. 5a-6a. It concluded that Washington's law was not preempted because it did "not regulate the airline-customer relationship or otherwise bind the airlines to a particular price, route, or service." Pet. App. 5a-6a (citing *Bernstein*, 3 F.4th at 1141 (quoting *Dilts*, 769 F.3d at 646)).

The court of appeals also rejected the Airlines' commerce clause argument. Pet. App. 6a-9a. "A 1.2 percentage point increase in flight delays—with many of those delays lasting fewer than fourteen minutes—is not a substantial burden . . . particularly for an

industry that anticipates delays at much higher rates under ordinary circumstances." Pet. App. 7a.

The court of appeals similarly rejected the argument that airlines cannot comply with multiple state laws. Pet. App. 8a. Based on the evidence presented, Washington's law would apply "primarily if not solely" to Alaska Airlines, and the Airlines had not presented "concrete examples of Alaska Airlines employees who would be covered by multiple paid sick leave laws" if the Airlines were to comply with Washington's law. Pet. App. 8a.

The court of appeals denied the Airlines' en banc petition, with no judge requesting a vote on rehearing. Pet. App. 2a.

REASONS TO DENY REVIEW

The Airlines seek to manufacture a reviewable conflict here by mischaracterizing the unpublished opinion's condensed analysis as rejecting this Court's established ADA case law and creating a new preemption test governing all generally applicable laws. But the court below did no such thing. It did not draw a dividing line between generally applicable and non-generally applicable laws at all. Rather, it followed the analysis of this Court in *Morales* and *Rowe* and the Ninth Circuit's prior analysis in *Dilts*, to "draw a line between laws that are significantly 'related to' rates, routes, or services, even indirectly, and thus are preempted, and those that have 'only a tenuous, remote, or peripheral' connection to rates, routes, or services, and thus are not preempted." *Dilts*, 769 F.3d at 643 (quoting *Rowe*, 552 U.S. at 371). Only in "borderline cases" in which the law has no significant connection to rates, routes, and services

does the Ninth Circuit examine whether the law nevertheless has a forbidden "significant impact" on rates, routes, and services by "binding" carriers to particular rates, routes, and services. Contrary to the Airlines' argument, this analysis is entirely consistent with this Court's preemption cases and the decisions of other circuits. The factbound application of this decade-old framework to a Washington law with "virtually imperceptible" impacts on airlines' prices, routes, or services does not warrant review.

A. The Ninth Circuit's Airline Deregulation Act Analysis Comports with this Court's Preemption Decisions

Contrary to the Airlines' characterization, the Ninth Circuit faithfully follows this Court's ADA preemption case law. The Ninth Circuit recognizes that ADA preemption of state laws "'related to a price, route, or service of [an air] carrier'" is "deliberately expansive." *Dilts*, 769 F.3d at 643 (quoting 49 U.S.C. § 14501(c)(1); *Morales*, 504 U.S. at 384)); 49 U.S.C. § 41713(b). But this "does not mean the sky is the limit." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013).[6] As noted in analyzing ERISA preemption, because "everything is related to everything else," *California Division of Labor Standards Enforcement v. Dillingham Construction N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring), an overly expansive

[6] This broad scope of preemption must still be analyzed against the backdrop of states' broad authority under its police powers to adopt protective regulations for employees. *DeCanas v. Bica*, 424 U.S. 351, 356 (1976).

interpretation of "related to" preemption language would exempt airlines and other carriers from virtually all state regulation, including obligations falling on all members of the public such as paying state taxes or complying with state labor or safety regulations. *See N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) ("If 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course . . . ."). There is no evidence Congress intended such expansive preemption of generally applicable laws as to airlines.

In drawing the line between state laws having a "significant impact" on rates, routes, or services and state laws with only remote or attenuated impacts, this Court has identified four principles governing its ADA preemption analysis:

> (1) state enforcement actions having a connection with, or reference to, carrier rates, routes or services are pre-empted;
>
> (2) such pre-emption may occur even if a state law's effect on rates, routes or services is only indirect;
>
> (3) it makes no difference whether a state law is consistent or inconsistent with federal regulation; and

> (4) pre-emption occurs at least where state laws have a significant impact related to Congress's deregulatory and pre-emption-related objectives.

Rowe, 552 U.S. at 370-71 (cleaned up) (quoting *Morales*, 504 U.S. at 384-90).[7] Laws are not preempted, however, if they have "only a 'tenuous, remote, or peripheral'" effect. *Id.* at 371 (quoting *Morales*, 504 U.S. at 390).

While the unpublished decision below did not detail each step of this analysis, it explicitly followed and applied *Rowe* and *Morales*, as well as *Dilts*. *See* Pet. App. 5a. *Dilts* explains that in determining preemption, courts first determine whether a state law has a forbidden "significant impact" by examining the state law's connection to prices, routes, or services. *Dilts*, 769 F.3d at 645 (quoting *Rowe*, 552 U.S. at 370-71). In analyzing this connection, the Ninth Circuit notes that state laws are more likely to have a "significant impact" on prices, routes, and services and to be preempted "when they operate at the point where carriers provide services to customers at specific prices." *Id.* at 646.

Dilts analyzed the Supreme Court cases cited by the Airlines here as illustrating the principle that laws with significant point-of-service impacts are more likely to be preempted than background regulations several steps removed from the

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[7] *Rowe* is a Federal Aviation Administration Authorization Act case; the FAAAA has substantially similar language to the ADA, and the courts use the case for both interchangeably. *Rowe*, 552 U.S. at 370.

customer-facing relationship. For example, in *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 284-85 (2014), this Court held that an airline customer's claim for breach of an implied covenant stemming from the termination of his frequent flyer account was "related to" prices, routes, and especially services because frequent flyer credits could be redeemed for free or reduced-cost services and because the state law claim would enlarge the contractual relationship between the carrier and its customer. Likewise, in *Morales*, the state law explicitly referenced airfares and established "binding requirements as to how tickets may be marketed if they are to be sold at given prices," which in turn dictated whether such services could be offered at all and at what fares. *Morales*, 504 U.S. at 388-90. Similarly, in *Rowe*, this Court determined that the FAAAA preempted a state law requiring tobacco retailers to use a specific delivery service and thus "regulate[d] a significant aspect of the motor carrier's package pickup and delivery service," thereby "freez[ing] into place services that the market would not otherwise provide." *Dilts*, 769 F.3d at 645-46 (citing *Rowe*, 552 U.S. at 372). In such cases, "the existence of a price, route or service [was] essential to the law's operation," thereby significantly impacting prices, routes, or services. *Dilts*, 769 F.3d at 646 (alteration in original) (quoting *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064, 1071 (9th Cir. 2001)).

Contrary to the Airlines' claim, the Ninth Circuit has recognized that even generally applicable laws having significant impacts on rates, routes, or services, such as laws significantly impacting the airline-customer relationship, are preempted under

the ADA. The Ninth Circuit has thus embraced rather than "outright rejected" this Court's analysis in *Morales* and *Rowe*. *See* Pet. 2.

The Ninth Circuit has explained that only in "'borderline' cases" in which a law does not refer directly to rates, routes, or services, "the proper inquiry is whether the provision, directly or indirectly, binds the carrier to a particular price, route or service and thereby interferes with the competitive market forces within the industry." *Dilt*s, 769 F.3d at 646 (quoting *Am. Trucking Ass'n v. City of Los Angeles*, 660 F.3d 384, 397 (9th Cir. 2001)). The Court made clear that this analysis does not apply to all generally applicable laws, but only those "generally applicable background regulations that are *several steps removed from* prices, routes, or services, such as prevailing wage laws or safety regulations." *Id.* at 646 (emphasis added). As confirmed in *Bonta*, "[w]hat matters is not solely that the law is generally applicable, but where in the chain of a motor carrier's business it is acting to compel a certain result . . . and what result it is compelling." *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 656 (9th Cir. 2021), *petition for cert. filed*, No. 21-194 (U.S. Aug. 11, 2021) (alteration in original) (quoting *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 966 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1331 (2019)). And the Ninth Circuit has emphasized that it misrepresents Ninth Circuit case law to suggest that only laws that "bind" carriers to a particular price, route, or service are preempted. *See Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024-25 (9th Cir. 2020).

The Ninth Circuit's approach is entirely consistent with this Court's cases. As this Court

recognized in *Rowe*, the scope of preemption of laws "related to a price, route, or service" does not ordinarily preempt laws "broadly prohibit[ing] certain forms of conduct" by both carriers and other businesses alike. *Rowe*, 552 U.S. at 368, 375. Such laws are often too "tenuous, remote, or peripheral" to warrant preemption. *Id.* at 371 (quoting *Morales*, 504 U.S. at 390). Similarly, in *Dan's City*, this Court explained that generally applicable zoning regulations "fall[] outside the [FAAAA's] preemptive sweep," even if such regulations effectively determine "the physical location of motor-carrier operations." *Dan's City*, 569 U.S. at 264. In this Court's view, such background laws would not sufficiently relate to the motor carrier's prices, routes, or services to warrant preemption. *Id.*

This analysis also comports with this Court's ERISA preemption case law, cited by this Court in analyzing whether a law is "related to" a price, route, or service. *Morales*, 504 U.S. at 384 (citing ERISA preemption case law to interpret meaning of "related to" under ADA); *see also Air Transp. Ass'n of Am.*, 266 F.3d at 1071-72. This Court has found ERISA preemption under similar preemption language when a state law "binds" an ERISA plan administrator to a particular action. *E.g.*, *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001) ("The statute binds ERISA plan administrators to a particular choice of rules for determining beneficiary status.").[8]

[8] This analysis is also used in other circuits to assess preemption under the FAAAA. The Third Circuit, for instance, instructs that the "courts should consider whether the law binds the carrier to provide a particular price, route, or

The Airlines assert that the Ninth Circuit has held that generally applicable laws are not preempted as a categorical "rule" and that the court's approach has rendered the ADA a "virtual nullity." Pet. 4, 18-19, 24. But this is rank mischaracterization: Ninth Circuit cases hold directly to the contrary. *See, e.g.*, *Dilts*, 769 F.3d at 643 (finding preemption for "laws that are significantly 'related to' rates, routes, or services, even *indirectly*, and thus are preempted") (emphasis added)); *Ward v. United Airlines, Inc.*, 986 F.3d 1234, 1243 (9th Cir. 2021) (holding state law not preempted where airline did not present evidence that "increased costs would have a 'significant impact' on its prices, routes, or services"); *Su*, 903 F.3d at 960 ("Our task, then, is to discern on which side [the law at issue] falls: a forbidden law that significantly impacts a carrier's prices, routes, or services; or, a permissible one that has only a tenuous, remote, or peripheral connection."); *see also Bernstein*, 3 F.4th at 1141 (quoting *Dilts* and *Rowe* to look at significant impact); *Bonta*, 996 F.3d at 659-60 (disagreeing that independent contractor law had a "significant effect on prices, routes, and services").

Contrary to the Airline's argument, the Ninth Circuit's "binds to" approach is just one analytical tool for determining whether a generally applicable labor law is too attenuated from prices, routes, or services to warrant preemption. *Air Transp. Ass'n of Am.*, 266 F.3d at 1071-72; *see also* Pet. App. 6a (citing *Bernstein*, 3 F.4th at 1141 (quoting *Dilts*, 769 F.3d at 646)). Faced with a generally applicable labor law

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service." *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812, 822 (3d Cir. 2019).

several steps removed from airline prices, routes, or services, the Ninth Circuit properly assesses whether a law is too attenuated from prices, routes, and services to warrant preemption by examining what the law actually compels. Where a background labor law is not significantly connected to prices, routes, and services, but applies to airlines and airline employees in the same way that it applies to members of the general public, the connection is too attenuated to support preemption.

B. The Airlines' Attempt to Manufacture a Circuit Split Does Not Warrant Review

Contrary to the Airlines' claims, there is no "embarrassing conflict of opinion and authority" warranting this Court's review. *See Rice v. Sioux City Mem'l Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955). Instead, the alleged circuit split cited by the Airlines is similarly based on the Airlines' mischaracterization of Ninth Circuit law as adopting a "categorical rule" that generally applicable laws are not preempted absent a "binding" impact. Pet. 4; *see also* Pet. 3, 8, 20. The Ninth Circuit has never adopted such a rule. Consistent with this Court's precedent, the Ninth Circuit has held only that generally applicable labor laws that are several steps removed from prices routes, and services are less likely to "relate to" prices, routes, and services than laws that significantly impact how an airline interacts with its customers. The Ninth Circuit has held that with such background labor or safety laws, the critical question is what the law actually requires, to use *Rowe*'s phrasing (552 U.S. at 372-73, 376), and whether it directly or indirectly compels a change in prices, routes, or services.

Other circuit courts are in accord. All circuits distinguish between laws significantly connected with prices, routes, and services that are thus preempted and laws that are too tenuously connected to justify preemption. All courts hold that both direct and indirect state regulation can be subject to preemption, and that generally applicable laws can be preempted. To the extent there is any difference among circuit decisions, it is in the labeling of the analytical tools to determine the degree of relatedness.

The Airlines assert the First Circuit "rejects a 'binds to' preemption test." Pet. 21-22 (citing *DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 86-88 (1st Cir. 2011); *Schwann v. FedEx Ground Package Sys., Inc.*, 813 F.3d 429, 438-39 (1st Cir. 2016); *Mass. Delivery Ass'n v. Healey*, 821 F.3d 187, 191-92 (1st Cir. 2016)); *see also* Pet. 3. But these decisions do not even mention the "binds to" language, much less reject it. For example, *DiFiore* cited approvingly Ninth Circuit cases as confirming the First Circuit's "view that the Supreme Court would be unlikely—with some possible qualifications—to free airlines from most conventional common law claims for tort, from prevailing wage laws, and ordinary taxes applicable to other businesses." *DiFiore*, 646 F.3d at 87. In finding the skycap tipping law at issue preempted, the court concluded the tipping law had a direct and significant connection to rates and services. As explained by the court, "the tips law as applied here directly regulates how an airline service is performed and how its price is displayed *to customers*—not merely how the airline behaves as an employer or proprietor. To avoid having state law deem the curbside check-in fee a 'service charge' would require

changes in the way the service is provided or advertised." *Id.* at 88 (emphasis added). *DiFiore* thus aligns with the Ninth Circuit analysis in determining whether a state law significantly relates to a price, route, or service by examining whether the law regulates an airline's relationship to its customers. Pet. App. 6a; *Bonta*, 996 F.3d at 657.

As to *Schwann* and *Healy*, neither mentions a "binds to" analysis or rejects it. *Schwann* dealt with a labor law that "in substance, bar[red] FedEx from using any individuals as full-fledged independent contractors to perform that service," which the court cited as the basis for finding preemption. *Schwann*, 813 F.3d at 437. The court examined whether the state law "mandat[ed]" a result that would interfere with services, which is entirely consistent with *Rowe*, *Egelhoff*, and the Ninth Circuit approach. *Id.* at 439. The court also acknowledged the outcome of the case would likely be different if the airline were not bound to change its service, citing a Seventh Circuit decision finding no preemption where a carrier had the ability to work around a labor rule, the law was narrower in scope, and the carrier had failed to show that the law would require a change in services provided by the carrier. *Id.* at 440 n.8. Similarly, *Healy* merely noted that the Massachusetts Attorney General believed the First Circuit's approach conflicted with the Ninth Circuit's approach. *Healy*, 821 F.3d at 192. The court did not substantively address Ninth Circuit law at all, much less reject it.

And contrary to the Airlines' argument (Pet. 22), the Ninth Circuit in *Bonta* did not concede a circuit split over the "binds to" analysis. Instead, the two circuits reached different conclusions applying

the same significant impact test (using different nomenclature: "binds" for the Ninth Circuit and "mandate" or "require[]" for the First Circuit). *Compare Bonta*, 996 F.3d at 660-61, 663 *with Schwann*, 813 F.3d at 436, 438-39. The applicable tests were not different; the difference was the target of the state law and the extent of the evidence of significant impact. Differences in outcomes do not show a conflict of law warranting review by this Court.

The Airlines also claim a conflict between the decision below and three cases from the Fifth, Seventh, and Eleventh circuits, which found preemption when the Ninth Circuit allegedly would not. But the Airlines distort the holdings of these cases. *See* Pet. 21-23.

Witty v. Delta Air Lines, Inc., 366 F.3d 380 (5th Cir. 2004), Pet. 22, involved a claim challenging the amount of legroom offered on airplanes, and thus plainly impacted the relationship between an airline and its customer at the point-of-service. Such a direct regulation of airline-customer relationships has a significant connection to airline services and prices under both Ninth Circuit and Fifth Circuit law. Where no such connection is shown, however, both circuits examine whether a law is too remote to routes, rates, or services to find preemption. *Compare Anderson v. Am. Airlines, Inc.*, 2 F.3d 590, 597 (5th Cir. 1993) (ADA does not preempt state law claim that airline retaliated against employee for filing workers' compensation claim because the claim "is far too remote to trigger pre-emption") *with* Pet. App. 5a-6a. There is no inconsistency between the Fifth Circuit's and Ninth Circuit's approaches.

The Seventh Circuit's cases likewise align with Ninth Circuit precedent. *Contra* Pet. 22. Like the Ninth Circuit, the Seventh Circuit holds that "state actions that affect airline rates, routes, or services in too tenuous, remote or peripheral a manner are not expressly preempted by the ADA," and that generally applicable labor laws are not preempted simply by imposing higher costs. *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1431 (7th Cir. 1996) (ADA did not preempt breach of contract claim or defamation claim, but preempted intentional tort related to ticketing); *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1054-55 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2289 (2017). For example, in *Costello*, the court explained that the FAAAA did not preempt a law governing wage deductions because the effect of the law on prices, routes, and services was too tenuous, remote, or peripheral. *Id.* The Seventh Circuit has also concluded that state labor laws are not preempted simply because of increased costs that could affect carrier prices and services. *S.C. Johnson & Son, Inc. v. Trans. Corp. of Am., Inc.*, 697 F.3d 544, 558 (7th Cir. 2012). The Ninth Circuit would likely reach similar results.

The Eleventh Circuit case cited by the Airlines, *Koutsouradis v. Delta Air Lines, Inc.*, 427 F.3d 1339 (11th Cir. 2005), likewise does not present a conflict. Pet. 23. That case found preemption in a lawsuit stemming from a baggage-handling incident, again addressing the heart of an airline's customer-facing services. *Koutsouradis*, 427 F.3d at 1344. The Ninth Circuit would thus likely have similarly found the claims preempted. Other Eleventh Circuit cases confirm the compatibility of Eleventh Circuit and

Ninth Circuit approaches to ADA preemption in the labor law context. *See Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1260 (11th Cir. 2003) (state law safety-related whistleblower claim not preempted under the ADA because it would not affect airlines' competitive decisions because all airlines must comply with safety mandates even though safety mandates may be tied to air carrier services); *Parise v. Delta Air Lines, Inc.*, 141 F.3d 1463, 1467-68 (11th Cir. 1998) (airline employee's state age discrimination claim not ADA-preempted).

Contrary to the Airline's argument, the Ninth Circuit's approach to ADA preemption is not narrower than other circuits. *Contra* Pet. 21. Like the Ninth Circuit, most courts have held that background employment laws lack a significant connection to rates, routes, and services and thus are not preempted under the ADA. In *Abdu-Brisson v. Delta Air Lines, Inc.*, 128 F.3d 77, 84 (2d Cir. 1997), for example, the Second Circuit held that "[p]ermitting full operation of New York's age discrimination law will not affect competition between airlines—the primary concern underlying the ADA." In *Bedoya*, the Third Circuit held that the FAAAA did not preempt the state's employment classification test—a "backdrop" law "steps removed" from prices, routes, or services. *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812, 824 (3d Cir. 2019), *cert. denied*, 140 S. Ct. 102 (2019); *see also Gary v. Air Grp., Inc.*, 397 F.3d 183, 189 (3d Cir. 2005). In *Wellons v. Northwest Airlines, Inc.*, 165 F.3d 493, 494-95 (6th Cir. 1999), the Sixth Circuit rejected an ADA preemption challenge to a Michigan statute prohibiting racial discrimination in employment, "[b]ecause the plaintiff's claims bear

only the most tenuous relation to airline rates, routes, or services." And the Eighth Circuit in *Watson v. Air Methods Corp.*, 870 F.3d 812, 818-19 (8th Cir. 2017), held "that any effect of Missouri wrongful-discharge claims on the contractual arrangement between an air carrier and the user of its service is too tenuous, remote, or peripheral to deem the claims expressly pre-empted by the ADA."

Tellingly, having failed to demonstrate a genuine circuit split warranting review, the Airlines rely heavily on an alleged conflict between the decision below and two district court cases. Pet. 5, 21, 24, 28, 32 (citing *Air Transp. Ass'n of Am., Inc. v. Healy*, No. 18-cv-10651-ADB, 2021 WL 2256289 (D. Mass. June 3, 2021); *Delta Air Lines, Inc. v. N.Y.C. Dep't of Consumer Affs.*, __ F. Supp. 3d __, No. 17-CV-1343, 2021 WL 4582138 (E.D.N.Y. Sept. 30, 2021)). Even if the cases were genuinely in conflict, it would not warrant review under this Court's rules. *See* Rule 10(a). But there is no genuine legal conflict. Rather, the cases represent different conclusions reached by different jurists based on different state laws and different evidence. In *Delta Air Lines*, for example, the court cited the broad scope of the local sick-leave law as significant to its preemption determination. There, the law applied to "any flight attendant who, at any point during the year works on a flight that lands in or takes off from a New York City airport" (*Delta Air Lines, Inc.*, 2021 WL 4582138, at *11), whereas the record here showed Washington's law applied only to Alaska Airlines. And in *Healy*, the court found only that disputed issues of material fact existed about whether impacts from the sick-leave law would be significant enough to warrant preemption. *Healy,*

2021 WL 2256289, at *12. Such minor differences in evaluating specific evidence do not represent genuine conflicts of law warranting intervention by this Court.

C. The Ninth Circuit Correctly Applied This Court's Precedent in Finding No Preemption

Washington's sick-leave law bears at most a trivial connection to airline prices, routes, and services. In this fact-specific case, the court did not err in finding no preemption.

The Airlines failed to show that Washington's law would have any significant impact on prices, routes, or services. Industry insiders repeatedly affirmed that existing sick-leave laws do not impact prices, routes, or operations, including services. CA9.SER.059, 091-92, 134, 136, 157, 159, 178, 183-84, 409-10, 418-21. And while the Airlines offered anecdotal opinions that sick-leave laws can cause delay, the quantitative evidence in the record demonstrates otherwise. New York City's paid sick-leave law did not cause any statistically significant increase in delay for two years, with only a nominal 1.2 percentage-point increase in delays for a short seven-month-period thereafter, which also coincided with a period of significant operational turmoil due to the airline's merger. CA9.SER.227, 277, 285-86, 290. And a flu outbreak in April 2017 matched a spike in leave usage. CA9.SER.314-15.

The Airlines assert that "even a relatively small (i.e., one percentage point) increase in delays will delay thousands of passengers each day." Pet. 11 (quoting CA9.ER.372). But neither their expert's report nor any other evidence showed that a

one-percentage-point increase in nationwide delays would happen because of Washington's law, which the record here shows applies only to Alaska Airlines. Any nationwide extrapolation from the short and slight 2017 increase experienced by Virgin America in New York (*see* Pet. 17) isn't supported by the record.

Even if such minimal delay could be shown, the lower courts properly concluded that the impact still would not be significant in context. The Airlines have never denied that there is an average twenty-one percent delay in the industry. CA9.SER.195-99, 236, 344. The airline industry has built delay into its business model to maximize profits, CA9.SER.438, 448-51; it cannot then claim that the slightest delay caused by laws aimed at protecting workers and public health is debilitating.

And Washington's law does not prevent airlines from combatting sick-leave abuse. Washington's law allows an employer to discipline an employee who abuses sick leave. CA9.ER.969. An employer may also require flight crew to give reasonable notice before taking leave. Wash. Rev. Code § 49.46.210(1)(f). And airlines can still use all the sophisticated tools they currently employ to predict and manage absences. CA9.ER.240; CA9.SER.102, 155-56, 167-69, 186, 212-14, 463-65. The Airlines noted that "sick leave 'call outs tend to spike on weekends, holidays, and the days before and after weekends and holidays.'" Pet. 11. This happens regardless of whether there is a sick-leave law. CA9.SER.161-62, 485-89. Because it is predictable, the Airlines already marshal resources to mitigate the effects of such absences.

The Airlines' other claims of significant impact on routes, rates, or services are likewise meritless. The Airlines' claims that they can't work with a "patchwork" of laws are belied by facts they've conceded. Pet. 30. The Airlines admitted to being able to track and operate under the laws of multiple jurisdictions, as they have for decades. CA9.SER.045, 058, 066-81, 097-100, 104-05, 133, 160, 230, 232, 416-17, 425. As multinational corporations, airlines have long had to follow multiple jurisdictions' laws for workers' compensation, unemployment, taxes, and labor laws. Congress has shown no intent to limit labor laws as applied to airlines. In fact, it has applied the Family Medical Leave Act (FMLA) (29 U.S.C. § 2611(2)(D)) to airlines, which provides for unpaid time off from work for illness and allows states to have stronger laws governing "family or medical leave rights." 29 U.S.C. § 2651(b). Thus, airlines are already required to follow different laws in different states under the FMLA.

The Airlines' claims about increased operational costs and speculative assertions about reduced routes do not establish a reason for review. Pet. 31. Nearly every state regulation involves costs, and such operational costs are several steps removed from prices, routes, and services. And airline witnesses testified that their sick-leave usage information isn't even passed on to those who set fares and that sick leave does not affect where airlines fly. CA9.SER.174-75, 185, 401. As for the jurisdictions with paid and protected sick-leave laws, not one airline reported a reduction of routes as a result of the leave law. The court below correctly concluded that the specific evidence presented in this case did not

demonstrate a significant impact on prices, routes, or services.[9]

D. This Case Is a Poor Vehicle and the Question Presented is Oft and Recently Denied

This case would be a poor vehicle for review because resolution of the question presented would not result in a different outcome. The Airlines seek a determination that ADA preemption rests solely on whether a law significantly impacts "rates, routes or services," and not whether the relevant law "binds" airlines to a particular rate, route, or service. But the district court explicitly held that the Airlines had failed to "show that [Washington's law] has a 'significant impact' on routes, prices, or services." Pet. App. 37a. Thus, a remand based on the Ninth Circuit's brief, unpublished reference to the "binds to" analysis would be pointless, simply delaying the same ultimate outcome.

Moreover, this Court has recently and repeatedly denied review in cases claiming the same circuit split alleged here about how to interpret the ADA and similar statutes. Given that the Court has denied review in at least a dozen cases in the last

[9] The Airlines also appear to argue that because they lost under the commerce clause, this means there is an ADA violation. Pet. 25-27. Nonsense. If anything, losing the commerce clause claim shows the minimal impact of Washington's law. The Airlines could not even show a substantial burden on commerce, let alone on their prices, routes, and services. *E.g.*, *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

decade addressing this topic,[10] there is no reason to grant review of an unpublished opinion where this issue is irrelevant to the outcome.

E. This Court's Decision Should Not Wait for *Bernstein*

Contrary to The Airlines suggestion, Pet. 32-33, this Court should not wait for the resolution in *Bernstein* to resolve certiorari here. While the Court should deny certiorari in both cases, there would be no basis to grant certiorari here even if it is granted in *Bernstein*. Given the district court's explicit conclusion that Washington's law has no significant impact on routes, prices, or services, Pet. App. 37a, a remand here would simply delay the same ultimate outcome. And the Ninth Circuit's opinion, being unpublished, will have no binding effect within the

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[10] *See, e.g.*, *People v. Superior Ct. of Los Angeles Cnty.*, 57 Cal. App. 5th 69 (2020), *cert. denied sub nom Cal. Cartage Transp. Express v. California*, 142 S. Ct. 76 (2021); *Bedoya*, 914 F.3d 812 (certiorari denied); *Su*, 903 F.3d 953 (certiorari denied); *MacMillan-Piper Inc. v. Emp. Sec. Dep't*, 1 Wash. App. 2d 1055 (2017), *cert. denied*, 139 S. Ct. 605 (2018); *Costello*, 810 F.3d 1045 (certiorari denied); *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 59 Cal. 4th 772 (2014), *cert. denied*, 547 U.S. 1153 (2015); *Ortega v. J.B. Hunt Transp., Inc.*, 694 F. App'x 589 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 2601 (2018); *Amerijet Int'l, Inc. v. Miami-Dade County, Fla.*, 627 F. App'x 744 (11th Cir. 2015), *cert. denied*, 578 U.S. 976 (2016); *Godfrey v. Oakland Port Servs. Corp.*, 230 Cal. App. 4th (2014), *cert. denied*, 577 U.S. 922 (2015); *Dilts, LLC*, 769 F.3d 637 (certiorari denied); *Campbell v. Vitran Express, Inc.*, 582 F. App'x 756 (9th Cir. 2014), *cert. denied*, 575 U.S. 996 (2015).

circuit whether this Court reviews it or not. There is thus no basis for certiorari regardless of what happens in other pending cases.

CONCLUSION

For the foregoing reasons the petition should be denied.

RESPECTFULLY SUBMITTED.

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