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Supreme Court, U.S.  
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In the Supreme Court of the United States  
(No. 22-5820)

S. PATRICK MENDEL, et al

Petitioner

v.

LIANE RANDOLPH, et al.

Respondents

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

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**EMERGENCY APPLICATION TO JUSTICE ELENA KAGAN FOR  
PRELIMINARY INJUNCTIVE RELIEF**

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*S. Patrick Mendel v. Liane Randolph, et al*, filed July 7, 2022, Ninth Circuit Court of Appeals, see appendix of Writ of Certiorari filed and docketed here October 5, 2022.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S. C. §1254. No petition for rehearing was filed below. Jurisdiction is also asserted under 49 U.S.C. §14704 and 49 U.S.C. §14707. Jurisdiction and priority of this action is asserted under 28 U.S.C. §1657 because this is “ANY action for temporary or preliminary injunctive relief” which the law requires this Court, as a matter of law to: “shall expedite consideration of this action.”

## STATEMENT

**To The Honorable Elena Kagan, Associate Justice of The United States Supreme Court And Circuit Justice For The Court of Appeals of the Ninth Circuit:**

**This is an action to immediately enjoin unlawful conduct and enforce standing federal transportation laws in order to prevent the continuing murder, rape and assault of innocent lives.**

The laws at issue here, [49 U.S.C. §13506(b)(2) and 49 CFR 372.101] are laws designed by Congress as a preventative to criminal conduct. Immediate relief by the federal courts, as responsible for enforcement of these laws as assigned and required by Congress, by law [see 49 U.S.C. §14704 and 49 U.S.C. §14707], simply requires enforcing the transportation laws and enjoining further violations by the respondents. This will immediately stop the continuing criminal murder and bloodshed upon innocent lives entirely caused by the unlawful conduct of the

respondents Uber Technologies, Inc.<sup>1</sup> and the California State and local San Francisco government officials.

***There is no hyperbole here***; this action seeks to stop invited and enabled criminal murder conduct occurring throughout the United States. More than 65 Uber [and Lyft] drivers have now been murdered by their passengers, averaging now 1 a week. Annually, at least a thousand citizens are reported raped, and annually, several thousands of citizens are being criminally physically assaulted. All this bloodshed because the PREVENTIVES enacted by Congress, under federal transportation laws are being ignored and violated by Respondent Uber and usurped by California State and local officials in their collusive conduct.

This action seeks to put an end to the respondents' unlawful conduct and the federally prohibited and proven deadly business of brokering prearranged passenger transportation to private motor vehicles as an occupation and business; before another life is lost or irreparable injury occurs.

If successful this action will immediately eliminate serious "gig worker" [read Uber and Lyft drivers] labor wage concerns of the U.S. Secretary of Labor, currently attempting correctives for an occupation that is prohibited under transportation laws. SEE Request for Judicial Notice, #2. It would also restore a field of play for lawful operators, many of whom like Mr. Mendel cannot recover or rebuild their legal transportation business operations because to do so would require complying with State laws in direct conflict with federal laws, a *Hobson's* choice.

## **ARGUMENT**

PART ONE - The relevant law says: 49 CFR

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<sup>1</sup> Uber Technologies Inc. includes its subsidiaries' Rasier-CA LLC., and UberUSA LLC and its agents' officers directors and employees. "Uber" throughout this brief means all of Uber as described here

**§ 372.101 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.**

The partial exemption from regulation under the provisions of 49 U.S.C. subtitle IV, part B of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in 49 U.S.C. 13506(b) be, and it is hereby, removed to the extent necessary to make applicable all provisions of 49 U.S.C. subtitle IV, part B to such transportation when sold or offered for sale, or provided or procured or furnished or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business. [Emp. Added]<sup>2</sup>

*This Code of Federal Regulation explains in layman's terms what is expected when Congress removed the exemption for conduct which Congress has now decided will always be regulated and what conduct is prohibited, namely selling or arranging passenger transportation to private motor vehicles as an occupation or business, which means RIDESHARE is unlawful, driving as an occupation at Rideshare is unlawful under the law. So is "Uber" brokering or selling of passenger transportation to private motor vehicles, which is currently happening with about 1 million plus drivers across the United States. It is not legal for Uber to sell and arrange Prearranged Passenger Transportation providers, "Black Cars" IF you have not secured Bonds, Insurance under 49 U.S.C. §13904(f) and a Motor Carrier Permit as required. SEE: 49 U.S.C. §13904(d) and §13904(f). Uber has not and has never met these requirements, and the federal government's own official web site called "SAFER.gov will prove this fact!*

*SAFER provides to any and all access to its records of licensed insured or uninsured and citations issued for the entire transportation history or drivers and*

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<sup>2</sup> Source: National Archives – Code of Federal Regulations [32 FR 20036, Dec. 20, 1967. Redesignated at 61 FR 54708, Oct. 21, 1996, as amended at 62 FR 15421, Apr. 1, 1997]

*companies, brokers and freight forwarders, IF there is any permitting history in its records to the public and law enforcement 24 hours a day.*

Prearranged Passenger Transportation is regulated by Congress under Title 49, Subtitle IV, Part B, Chapter 145, §14501: - **Federal Authority over intrastate transportation, subsection (d):**

We let the law SPEAK here, *with commentary in italics:*

(d) Pre-Arranged Ground Transportation.—<sup>3</sup>

(1) In general.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service—

*The above is a Congressional preemption of State and local government interference with the federal scheme, to the layman pro se appellant here, this law limits the actions of the state and local governments...as in this case, the City and County of San Francisco, operators of the San Francisco International Airport CANNOT as a matter of law require, as they currently do a "license or permit and a fee for it, because this preemption denies them that ability, and Congress has plenary authority to make such commerce laws...*

(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and

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<sup>3</sup> Federal law defines PREARRANGED TRANSPORTATION AS FOLLOWS 49 U.S.C. 13102(19)

(19) Pre-arranged ground transportation service.—

The term "pre-arranged ground transportation service" means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

*All Prearranged Transportation of Passenger Transportation providers must also meet all State **Vehicle and intrastate passenger licensing** requirements of the home state or states in which it does business...<sup>2</sup> requirements are highlighted...The vehicle must have (1) State commercial vehicle passenger registration AND the provider must secure (2) home or base State passenger operating licensing...*

*Respondent Uber sells and arranges passenger transportation to drivers using their private motor vehicles contrary to the plain language demands of the law. Uber operates under California Public Utilities Code Sections 5430-5450 California law which does not require and in fact specifically does not require the driver or vehicle be licensed as required under federal law!*

*Respondent Uber UNLAWFULLY sells and arranges, through a smartphone application passenger transportation to unlicensed drivers using their private motor vehicles, creating a federally prohibited driver occupation and the federally prohibited Uber business of “brokering” passenger transportation to private motor vehicles. SEE: 49 CFR §372.101 ALSO SEE: Federal District Court recognition of Uber’s conduct described here at:*

*“Uber engineered a software method to connect drivers with passengers, but this is merely one instrumentality used in the context of its larger business. Uber does not simply sell software; it sells rides. Uber is no more a “technology company” than Yellow Cab is a “technology company” because it uses CB radios to dispatch taxi cabs,...” See: **O’Connor v. Uber Technologies, Inc.**, 82 F. Supp. 3d 1133 – (Dist. Court, ND California 2015)*

*This Court explained both why Congress had the right “under the commerce clause” to regulate and to prohibit such, [Uber’s conduct here] “travel bureaus or today’s Rideshare or Transportation Network Company” conduct in brokering or selling passenger transportation to private motor vehicles in **California v. Zook**, 336 U.S. 725 (1949).*

We quote from this Court's Zook decision, in relevant part:

*As the I.C.C. explained in Frank Broker Application, 8 M. C. C. 15, June 14, 1938:*

“Applicant’s limited knowledge of the passenger and owner-driver, and his inability to secure authoritative information with respect to each, of necessity makes it impossible for him to safeguard the rights of either. As a result of this practice, an unscrupulous passenger or owner-driver is given an opportunity to defraud honest citizens.”

*This reflects the politeness of the people and this Court, but the harms were deadly...*

*there are two related exceptions...*

*If a State licensed Prearranged Passenger Transportation provider is only operating with his home state he is exempt from federal registration, IF the State operator seeks to also operate in 1 or more neighboring States, they can secure the authority of each State in addition to the base State or they can choose to have base or home State licensing and a federal registration, rather than multiple State licensing SEE: 49 U.S.C. 13506 – Miscellaneous motor carrier transportation exemptions, see §13506(b)(1)(B)*

(C) is providing such service pursuant to a contract for—

(i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or

(ii) transportation by the motor carrier from one State, including intermediate stops in another State, to a destination in the original State.

(2) Intermediate stop defined.—

In this section, the term “intermediate stop”, with respect to transportation by a motor carrier, means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

(3) Matters not covered.—Nothing in this subsection shall be construed—

(A) as subjecting taxicab service to regulation under chapter 135 or section 31138;

*Taxicabs are exempt from federal regulations UNLESS they provide interstate transportation, then they too must comply. For Example: A Taxicab providing transportation at a distance of more than 70 miles from its base or home, taxicabs then must also comply with federal transportation laws. See I. C. C. v. Mr. B’s Services, Ltd. 934 F. 2d 117 (7<sup>th</sup> Cir. 1991)*

(B) as prohibiting or restricting an airport, train or bus terminal from contracting to provide preferential access or facilities to one or more providers of prearranged ground transportation service; and

*Congress granted airports like San Francisco International [“SFO”], operated by the respondents City and County of San Francisco, the ability to “contract with” willing “Prearranged Passenger Transportation providers to have “priority access to the airports customers....contracts are consensual agreements by to parties in agreement for reciprocal terms. Contrary to the prohibitions of section (d)(1) above, “SFO” mandates a permit or license and fees in direct defiance of the congressional prohibition and then adds a per trip fee, or head charge for each pick up or drop off of passengers, passengers who have contracted with the Prearranged Passenger Transportation provider, NOT the airport! Assertedly violating the right to contract. This is in direct conflict of 49 U.S.C. 14505, preempting State and local taxing of interstate transportation in 5 different ways. SFO collect unlawful millions monthly.*

(C) as restricting the right of any State or political subdivision of a State to require, in a nondiscriminatory manner, that any individual operating a vehicle providing prearranged ground transportation service originating in the State or political subdivision have submitted to pre-licensing drug testing or a criminal background investigation of the records of the State in which the operator is domiciled, by the State or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.

*States may require drug tests and criminal background checks, Congress took the time to grant what they would and would not allow State and local governments to do in relation to their regulatory scheme.*

*California's Transportation Network Company "Codes" which allow for unlicensed federally prohibited driver occupations using private motor vehicles is conduct that is specifically **PREEMPTED** by the federal law as made by Congress. The California State Officials, respondents' here have and are continuing to issue permits and charge fees for such conduct and have secured California legislative enactments to support their unlawful actions, contrary to the Supremacy and Commerce clause of the U.S. Constitution, in promoting and permitting for fees what Congress by law has preempted and prohibited. SEE; California Public Utilities Code Sections 5430 through 5450.*

**Now that we have explained the Transportation scheme...**

## **PART TWO - ELEMENTS REQUIRED FOR INJUNCTIVE RELIEF**

To prevail in an application for [mandate] or a stay or an injunction, an applicant must carry the burden of making a strong showing that it is "likely to succeed on the merits," that it will be "irreparably injured absent a stay," that the balance of equities favors it, and that a stay is consistent with the public interest.

*Whole Woman's Health v. Jackson, 141 S. Ct. 2494, 2495 (2021) (quoting Nken v. Holder, 556 U.S. 418, 434 (2009)). Each of these factors favors immediate injunctive relief.*

## I. The Applicant Is Likely To Prevail On The Merits Of His Claims

The Applicant should prevail because all he asks for is for the laws of this nation to be enforced as written to prevent murder, rape and assault on unsuspecting citizens and protect Mendel loss of constitutional rights and physical harms.

The command of the Commerce clause, Article 1, Section 8, Clause 3 of the U.S. Constitution is clear. It gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

This includes the regulation of *prearranged passenger* transportation providers, by motor vehicle, including transportation within a municipality, county or State that affects the interstate movement of citizens between States.

In fact the federal agency, the Federal Motor Carrier Safety Administration “FMCSA” says it best: and it is posted on the official federal government website:

The FMCSA (the agency enforcing the MCA) explains that:

“[i]f a trip starts in one State and ends in another and the travel uses multiple modes of transportation ... every part of the trip is considered interstate commerce if the entire trip is prearranged.”<sup>4</sup>

*Chevron* deference is applicable here. See: *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984).

Additionally, this Court addressed “prearranged passenger transportation” in *United States v. Yellow Cab*, 332 U.S. 218 (1947); nearly every federal court has mishandled in the Uber cases, including the Ninth Circuit, See: *Capriole, supra*.

The “Dormant Commerce Clause” refers to the prohibition, implicit in the Commerce Clause, against States and their political subdivisions passing

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<sup>4</sup> SEE: Official FMCSA government web site at:  
<https://www.fmcsa.dot.gov/regulations/multi-modal-passenger-transportation>

legislation that [is contrary to,] discriminates against, or excessively burdens interstate commerce.

The congressional authority to regulate and for preemption standards are under the authorities of this Court equally clear and in favor of the Applicant prevailing on his claims. See: *California v. Zook*, 336 U.S. 725 (1949). See also *California v. Thompson*, 313 U.S. 109 (1941).

Under this Court's decisions California's Transportation Network Company codes; these codes 5430-5450 [laws] permit the brokering of prearranged passenger transportation to unlicensed private motor vehicles as an occupation and business. This is conduct in direct conflict with federal requirements 49 U.S.C. §14501(d)(1) mandating that the vehicles used must be registered as, and licensed to, provide prearranged passenger transportation. Additionally federal law mandates that prearranged passenger transportation can only be brokered - sold or arranged to properly permitted - motor carriers holding State vehicle passenger registration and State passenger authority at a minimum.<sup>5</sup> These conflicts of State permission against federal prohibitions require preemption as this Court has explained in *Zook, supra*

In fact, passenger brokers must also acquire a federal motor carrier permit as well. See: 49 U.S.C. §13904(d). This is because ***there is no "passenger broker,"*** permit or license available or issued by the Federal Motor Carrier Safety Administration. Not for passenger brokers of bus or trains or motor vehicle transportation of passengers of any kind.

EXCEPT SEE: Passenger brokers are required to comply with 49 U. S. C. §13904(f) requiring bonds and insurance for passenger brokers [the law is not stated mandatory, but the implementing regulations do mandate bonds and insurance see 49 CFR §387.311] and 49 U.S.C. §13904(d) requires brokers to

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<sup>5</sup> Prearranged Passenger Providers are motor carriers under federal definitions.

register as motor carriers even when they do not own or operate any vehicles.  
Uber does not own or operate any vehicles!

Federal law, 49 U.S.C. §14501(d)(1)(B) mandates that to provide prearranged passenger transportation; one must secure at a minimum (1) State passenger vehicle registration [commercial plates] and (2) State passenger authority [a State issued passenger carrying permit] to provide prearranged passenger transportation. See also 49 U.S.C. §13506(b)(2)

That said; Applicant will show that:

- Federal transportation laws *prohibit* the *brokering* and sales and arranging by respondent Uber Technologies, Inc., and its subsidiaries' of prearranged passenger transportation to private motor vehicles.
- Federal transportation laws preempt the respondent California Officials from granting permits to broker prearrange passenger transportation to private motor vehicles as an occupation or business because it conflicts with federal law requirements.
- Federal transportation laws specifically preempt respondents' City and County of San Francisco and the Director of the San Francisco International Airport from mandating licenses and fees in defiance of federal prohibitions for the same under 49 U.S.C. §14501(d)(1).

Applicant should prevail because the law and authorities are all on his side against the indisputable facts of all of the respondents' unlawful conduct.

Uber has been found under several federal court decisions as brokering or selling rides since 2015: One quote should be enough:

*"Uber engineered a software method to connect drivers with passengers, but this is merely one instrumentality used in the context of its larger business. Uber does not simply sell software; it sells rides. Uber is no more a "technology company" than Yellow Cab is a "technology company" because it uses CB*

*radios to dispatch taxi cabs,...*” See: *O’CONNOR v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133 – (Dist. Court, ND California 2015)

The federal law says: [in relevant part]

**49 U.S.C. §13506(b)(2)**

“(b) **Exempt Unless Otherwise Necessary.**—Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over—

(2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, *except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part;* [Emp. Added]

The implementing regulation states: 49 CFR §372.101

“§ 372.101 Casual, occasional, or reciprocal transportation of passengers for compensation when such transportation is sold or arranged by anyone for compensation.”

“The partial exemption from regulation under the provisions of 49 U.S.C. subtitle IV, part B of the casual, occasional, and reciprocal transportation of passengers by motor vehicle in interstate or foreign commerce for compensation as provided in 49 U.S.C. 13506(b) *be, and it is hereby, removed to the extent necessary to make applicable all provisions of 49 U.S.C. subtitle IV, part B to such transportation when sold or offered for sale, or provided or procured or furnished or arranged for, by any person who sells, offers for sale, provides, furnishes, contracts, or arranges for such transportation for compensation or as a regular occupation or business.* [Emp. Added]

The law clearly provides for only licensed motor carriers to provide the prearranged passenger transportation. This is not what Uber does. It sells and arranges passenger transportation under, the “Transportation Network company” or “TNC”

permit they lobbied for and the respondent State officials granted and still provide to any and all who pay a fee for the permit. The Commissioners; respondents' here, issued a RESOLUTION when they created this permit that specifically says the drivers do not need a permit, only Uber does. California laws confirm this fact.

Uber brokers prearranged passenger transportation to two (2) types of vehicles.

- To Black Cars federally compliant with (1) State passenger vehicle registration and with (2) State issued passenger authority;
  - This is unauthorized and unlawful under 49 U.S.C. §13904(f) as Uber has not secured bonds and insurance and unauthorized and unlawful under §13904(d), because Uber has not secured a federal motor carrier permit as required.
- To “TNC” or rideshare drivers using their private motor vehicles; this is unlawful and would never be federally authorized under 49 U.S.C. §13506(b)(2) because the law mandates federal registration:
  - when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; [Emp. Added]

As shown here all of Uber's brokering, selling or arranging, of prearranged passenger transportation is unlawful and contrary to the above federal laws and regulations while inviting criminal conduct.

#### 1) The California Laws and State Officials<sup>6</sup>

The respondent Commissioners' of the California Public Utilities Commission, created a “Transportation Network company, “TNC” permit *to broker*

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<sup>6</sup> BECAUSE THIS ACTION CHALLENGES THE LAWS OF CALIFORNIA THE CALIFORNIA ATTORNEY GENERAL HAS BEEN SERVED VIA HIS COUNSEL IN THIS CASE BELOW.

***prearranged passenger transportation.*** This creation is now supported by enactments by the California Legislature. CPUC codes 5430-5450. These enactments and the Commissioners' creation of a "TNC" permit are preempted by federal law and under this Court's teachings for federal preemption under *California v. Zook*, 336 U.S. 725 (1949)

Congress specifically preempted the States and local governments from interfering with their regulatory scheme **for ANY brokers**....freight or passenger.

Quoting the federal law:

**49 U.S.C. § 14501**

**(b) Freight Forwarders and Brokers.—**

**(1) General rule.—**

Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States **shall enact or enforce** any law, rule, regulation, standard, or other provision having the force and effect of law **relating to** intrastate rates, intrastate routes, or **intrastate services of any** freight forwarder or **broker**.

[Emphasis added]

The cited law is clear; California is preempted from and cannot enact their "Transportation Network company codes, creating intrastate brokering service permits. Brokering is a service and Congress has preempted California from enacting **ANY** law, rule or regulation or standard – over "**intrastate**- "related to" services of **ANY broker! This includes "passenger brokers."**

Congress did not exclude "passenger brokers" and this Court should uphold what the law says! California's law is underlined below which describes the very conduct Congress has preempted.

"TNC" ...that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle."

This is selling and arranging passenger transportation, "brokering."

As Applicant has already pointed out above, Uber's brokering is contrary to the federal regulatory scheme as Congress designed it under the RIDE ACT.

California enacted their Transportation Network company codes under their Public Utilities Codes: ARTICLE 7. Transportation Network Companies [5430 - 5450]

Applicant cites to the [relevant] California "Transportation Network company definitions as enough to show a conflict with the federal preemption of State laws over intrastate brokering and the prearranged passenger transportation scheme:

"For purposes of this article, the following terms have the following meanings:

(a) "Participating driver" or "driver" means any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers.

(b) "Personal vehicle" means a vehicle that is used by a participating driver to provide prearranged transportation services for compensation that meets all of the following requirements:

(1) Has a passenger capacity of eight persons or less, including the driver.

(2) Is owned, leased, rented for a term that does not exceed 30 days, or otherwise authorized for use by the participating driver.

(3) Meets all inspection and other safety requirements imposed by the commission.

(4) Is not a taxicab or limousine.

(c) "Transportation network company" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle. [Emphasis added]

It is obvious to even this non-attorney applicant here that the underlined parts of the definition of the "TNC" codes above provide for the use of private motor vehicles

with drivers who do not hold State passenger authority and for the selling and arranging of prearranged passenger transportation, “brokering” all preempted by federal law.

None of the requirements reach or comply with the mandated federal requirements under 49 U.S.C. §14501(d)(1)(B)

49 U.S.C. §14501(d)(1)(B) states: [in relevant part]

“(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and” [Emphasis added]

Likewise, the California codes defy the mandates under 49 U.S.C. §13506(b)(2) above [requiring federal registration pending or secured] by the motor carrier, accepting or being sold the passenger transportation by a broker.

This conflict between California’s TNC” codes and the federal laws require preemption from this Court under *California v. Zook*, 336 U.S. 725 (1949).

Likewise, applicant seeks to have the respondent Commissioners’ State officials enjoined from granting any further such TNC permits and required to recall the TNC permits they have issued.

**2) The City and County of San Francisco and the San Francisco International Airport and Ivar. C. Satero, Director**

In the case of these respondent local government entities and officials, federal laws specifically preempt their mandated licenses or permits and the fees they charge for the permit as well as the fees they charge to enter or exit the airport *on non-contracted* prearranged passenger transportation providers. Federal law 49 U.S.C. §14501(d) states:

“(d). Pre-Arranged Ground Transportation.— [relevant part]

(1)In general.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service—

(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;

(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business; and [Emp. Added]

Applicant asserts the law here is clear, and just addressing section (B) if the vehicle has State vehicle registration and State passenger authority [the underlined] then the Respondents’ City and County of San Francisco operators of the San Francisco International Airport and Airport Director, Ivar C. Satero are preempted from mandating a license or charging fees:

“No ... political subdivision thereof and no interstate agency shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee”

Applicant has narrowed this to Item “B” because item “A” is subject to exemption under 49 U.S.C. §13506(b)(1)(B).<sup>7</sup> [See footnote 3 below]

Applicant is entitled to the due process of law and rightly seeks to enjoin these respondents from further violating the preemptions of Congress.

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<sup>7</sup> (B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

Further, the airport was given an “exemption” of sorts. Under 49 U.S.C. §14501(d)(3)(B) the airport may contract for preferential access to their facilities and customers with one or more prearranged passenger transportation providers. This is not what they have done. They have, with the force of law mandated licenses and permits, charging fees for it and charging fees for each “Black Car” and “TNC” Car that picks up or drops off a passenger at the airport. It’s unlawful!

**B. The Applicant’s Standing Is Clear and Indisputable**

The district court declined to issue a restraining order or injunctive relief and claimed Applicant had no standing to bring his claims, and dismissed his complaint under the erroneous application of the judicial doctrine of *res judicata* and for lack of standing.

But, Applicant’s standing is clear, his 14<sup>th</sup> Amendment Right to due process, when denied is irreparable harm of the highest order.... he has had his legal, properly licensed prearranged passenger transportation [Black Car] State permit unlawfully revoked, not just suspended as was formerly done... with the result his business was decimated. Uber’s unlawful business conduct and unlawful competition destroyed his market and generally the market for all legal prearranged passenger transportation providers.

Applicant has a federal statutory right to bring this action under the laws of Congress. The federal courts have been charged by Congress to enforce their prearranged passenger transportation scheme under 49 U.S.C. §14704 [Rights and remedies of persons injured by carriers and brokers.]

Applicant has standing also under a federal statutory right granted by Congress to make a claim for the injuries raised here. Congress provided 49 U.S.C. §14707. [Private enforcement of registration requirement]

Applicant is, and it is indisputable a person, claiming injury for the acts and omissions of Uber’s unlawful brokering and failing as a passenger broker

to register as a motor carrier as mandated under 49 U.S.C. §13904(d) and failing to comply with mandatory bonds and insurance under 49 U.S.C. §13904(f) and 49 CFR 387.311.

Applicant has suffered the unlawful revocation of his [Black Car] permit, by CPUC officials for refusal to provide his IRS 1099 Forms and pay unlawful fees, and been subjected to unlawful preempted licenses and fees at the San Francisco International Airport as well as working under the constant threatened physical harm in the process by unruly, *unknown* Uber passengers. The name a driver sees for pick up is the name the passenger has entered into the Uber smartphone application, and not their legal identified name.

These injuries are traceable to the unlawful conduct of the respondents all who are actively violating the mandates and preemptions of State and local authorities contrary to of in direct defiance of federal transportation laws.

All of these injuries will cease to continue and can be redressed with the granting of injunctive relief enjoining the respondents from violating the plain language and intent of the federal transportation laws for prearranged passenger transportation.

## **II. Applicant Will Suffer Irreparable Harm Absent Immediate Injunctive Relief**

Applicant has a right to work in the lawful profession of his choice. Applicant was a 30 plus year veteran Back Car driver, providing federally legally compliant prearranged passenger transportation. He now cannot even continue to drive for Uber as a *rideshare* driver because to do so puts his very life at risk of continuing criminal conduct by the unknown passengers who Uber assigns to him for transportation. Applicant's livelihood is gone and cannot return until this Court enjoins the unlawful conduct of the respondents.

While applicant lost his vehicle do to the conduct of the respondents, there are other companies, who would gladly allow applicant to work, if there was work available, which cannot happen until Uber is enjoined from their unlawful flooding of the streets with private motor vehicles.

Applicant seeks to have Uber enjoined from their price-fixing scheme, in violation of the Sherman Act, Antitrust laws. Applicant is approaching 65 years of age, and starting a new career is unworkable and unwanted by most prudent business establishments.

Applicant has been rendered homeless and reliant upon friends and family for his survival. Everything is repaired; the minute Uber and its colluding government officials are enjoined from the lawless havoc they have caused upon the entire federally regulated prearranged passenger transportation business.

The respondents' joint conduct has removed everything Congress enacted as preventives for the continuing criminal conduct Uber's business has resurrected; with the unlawful aid of government officials, destroying the congressionally enacted preventatives for the safe prearranged transportation of passengers among and between the States.

### **III. The Balance Of Equities Favors An Injunction**

The balance of equities favors an immediate injunction because it is clear, every day that passes without the respondents' compliance with the federal regulatory scheme for prearranged passenger transportation leads to irreparable harm.

Criminal murder, rape, and assaults will continue by unknown assailants introduced by Uber to unsuspecting drivers and passengers via its "smartphone application." It's a telephone! It's an inanimate object. It's not magic, and it cannot be deployed or adapted with artificial intelligence to protect the drivers or passengers.

The federal courts have been charged by Congress to enforce their prearranged passenger transportation scheme under 49 U.S.C. §14704 [Rights and remedies of persons injured by carriers and brokers.]

Further Congress provided 49 U.S.C. §14707. [Private enforcement of registration requirement] to have the federal courts resolve the problems raised here. Mr. Mendel has a Fourteenth Amendment Right to due process, a Constitutional right, which demands restoration by simply enforcing the laws.

Charles Alan Wright & Arthur R. Miller, et al., 11A Fed. Prac. & Proc. Civ. § 2948.2 (3d ed.) (“[W]hen plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.”).

#### **IV. The Public Interest Favors An Injunction**

An immediate injunction will prevent the needless criminal murder, rape and assault of innocent citizens who only seek to put forth honest work without the threat of irreparable harm. Passengers will once again be able to travel this once “safe” great country under the knowledge that this Court has enforced the laws and preserved the regulatory preventatives Congress enacted for their safe travel.

An injunction will ensure that the Constitution and federal transportation laws, 49 U.S.C. §14501(d), including the RIDE ACT and Interstate Commerce Act are obeyed, which is by definition in the public interest. See Berman v. Parker, 348 U.S. 26, 32 (1954) (“Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive.”).

An immediate injunction will also advance the public interest by forcing the Commissioners’ of the California Public Utilities Commission to conform their conduct under the Supremacy and Commerce clauses of the U.S. Constitution along with the recalcitrant respondents of the City and County of San Francisco who have

abused their government offices and should be restrained from their preempted conduct and prevented from abusing the applicant and the citizenry at large.

#### REQUEST FOR JUDICIAL NOTICE

Mr. Mendel has filed with this application a Request for Judicial Notice. We ask this Court to notice that several members of Congress wrote letters to the CEO's of Uber and Lyft concerned about driver safety because of the preventable murders. Clearly they either do not know their own transportation laws, or they are trying to solve a problem, which is not their duty to enforce. The duty of enforcement belongs with the Courts as a matter of law.

Mr. Mendel has provided some media reports to show the deaths of drivers occurring, more than 64 now since 2017, and now occurring at the rate of 1 a week, while he has tried to get the Courts to honor their lawful obligations. It was shocking to see Uber and Lyft gain a decision from this Court recently which further wrongly gave the approval of the highest Court in America for a bunch of law violators, operating a business prohibited by federal laws, and not entitled to any respect in a federal court of law, by this Court's own authorities.

See: Uber Technologies, Inc., et al., Petitioners v. Johnathon Gregg, Case # 21-453 and Lyft, Inc., Petitioner v. Million Seifu, Case # 21-742

#### IN SUMMARY

Uber violates the core prohibitions of the federal transportation laws, and they did not stop there. They also violate the mandatory federal leasing laws, 49 U.S.C. §14102, which would prevent their current abuse of selling the labor and materials of the independent contractor drivers for less than the drivers labor and vehicle operational expenses, they violate the anti-monopoly transportation laws under 49 U.S.C. §14103 and on and on. This business "they" have created is not new! It was in existence after the great depression and was as deadly then as it is now, because human behavior doesn't exactly repeat but it rhymes with the same deadly effect. Travel bureaus and shared-expense in the 1940's and today's

Transportation Network Company and Rideshare is the same Zebra with stripes running in the same deadly direction.

As for the State and local governments they are as unable to address the problem as their predecessors failed to do. Congress found this to be a fact and in fact nearly every State at Uber's pandering and financial influence have enabled the very conduct that has innocent people being murdered for the thrill of the criminal mind. It should end here and immediately.

## CONCLUSION

Congress regulates transportation throughout the United States and preempts by law State interference, to insure a competitive marketplace; and importantly to secure the safety of the American people.

Significantly, Congress enacted transportation laws, prohibiting the sale and arrangement of passenger transportation to private motor vehicles, today's *rideshare*, - laws designed to prevent criminal conduct including the murder of innocent unsuspecting citizens, while preempting State interference and assigning by law the enforcement of their statutory scheme upon the federal courts.

Since 2015, the Appellate and District Courts, in hundreds of cases, including this one, have failed to recognize, apply or enforce the laws, the *Preventatives* of the Congressional Transportation scheme leading to the documented and continuing murder of innocent unsuspecting citizens and related criminal and civil misconduct.

The solution to stop the criminal conduct is as simple as enforcement of the federal laws, by the federal courts, as delegated by the laws of Congress. Most importantly is the restoration of Mr. Mendel's right to due process of law under the Fourteenth Amendment! Violation of Constitutional rights is according to this Court the very definition of irreparable harm upon Mr. Mendel.

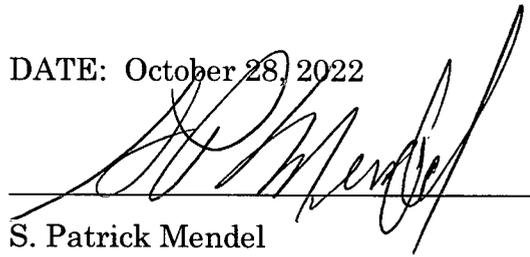
This Court should immediately enjoin Uber's conduct contrary to federal transportation laws and immediately enjoin the respondent California State and

Local officials from usurping federal transportation laws, until a determination of the constitutionality of California's laws can be determined by this Court.

May God save America!

Respectfully submitted;

DATE: October 28, 2022

A handwritten signature in black ink, appearing to read "S. Patrick Mendel", is written over a horizontal line. The signature is cursive and somewhat stylized.

S. Patrick Mendel