No. 23-475

IN THE

Supreme Court of the United States

YING YE, AS REPRESENTATIVE OF THE ESTATE OF SHAWN LIN, DECEASED,
Petitioner,

v.

GLOBALTRANZ ENTERPRISES, INC.,
Respondent.

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

BRIEF OF THE INSTITUTE FOR SAFER TRUCKING AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS[1]

The Institute for Safer Trucking is a non-profit organization in Washington, D.C., that supports survivors of truck crashes and families of victims. The Institute aims to reduce truck crashes, injuries, and fatalities by educating the public, the trucking industry, and lawmakers about data-driven solutions such as minimum-insurance increases for interstate motor carriers and the adoption of safety technologies.

The Institute has a deep interest in ensuring that the Federal Aviation Administration Authorization Act (FAAAA) is interpreted properly. The FAAAA's preemption provision, 49 U.S.C. § 14501(c), under its plain text, preserves state-law personal-injury claims against freight brokers arising from truck crashes based on the brokers' negligent hiring of unsafe motor carriers. The Seventh Circuit's atextual holding that the preemption provision's safety exception does not apply in those circumstances because there is no "direct link between negligent hiring claims against brokers and motor vehicle safety," Pet. App. 11a, is wrong. *See* Pet. 11-17. And, as explained below, that holding poses grave safety concerns. For these reasons, this Court should grant review and reverse.

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[1] Counsel of record for all parties received notice of amicus's intent to file this brief at least ten days before its due date. No counsel for a party authored this brief in any part, and no one other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of the brief.

SUMMARY OF ARGUMENT

Every year, 400,000 large-truck crashes occur, killing 4,000 people and injuring 145,000 more. Crashes between 80,000-pound commercial trucks and ordinary passenger vehicles are catastrophic, causing severe injuries, death, and millions of dollars in costs per incident. Most of the harms resulting from these life-changing tragedies are borne by the occupants of passenger vehicles.

In the commercial-trucking industry, freight brokers like respondent GlobalTranz serve as intermediaries. Brokers handle logistics for shippers (who want their goods distributed around the country) by hiring motor carriers (who operate commercial trucks) to transport the shippers' goods. Over eighty percent of shippers use brokers to facilitate movement of their goods. Thus, as GlobalTranz told this Court less than two years ago, the question presented is worthy of review because brokers are "central to the efficient operation of supply chains." Br. for Leading Indus. Freight Brokers as Amici Curiae Supporting Cert. at 2, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. May 19, 2021).

Though federal law regulates motor carriers, neither the regulations themselves nor their enforcement are adequate to ensure road safety, particularly for the occupants of small passenger vehicles that share the road with 80,000-pound commercial trucks. To make matters worse, motor carriers are required to carry only $750,000 in liability insurance, which is grossly insufficient to compensate victims and their families for the incapacitating injuries and deaths commercial-truck crashes cause.

As for brokers, federal law does not impose safety obligations at all. They are not required to check the safety records of the motor carriers they are hiring, nor even to assess whether the carriers have adequate mechanisms in place for truck safety and driver training.

Because of this lack of federal oversight, brokers can be indiscriminate in their hiring decisions. They can hire any carrier unless federal regulators have expressly revoked that carrier's authority to operate because of safety concerns. Even then, brokers—including respondent GlobalTranz here—hire carriers who are deemed unsafe but have reregistered illegally under different names to remain on the road. Given this federal regulatory vacuum, brokers will not hold themselves responsible for hiring carriers with adequate safety practices unless state law, including the traditional common-law duties on which petitioner Ye relies, incentivizes them to do so.

The complete lack of federal safety oversight underscores why brokers are not immune from state tort liability. The petition (at 11-17) explains why, on its plain terms, the safety exception to FAAAA preemption—which preserves the "safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)—safeguards state tort suits like petitioner Ye's.

And that makes sense. In 1980, Congress deregulated the *economics* of the trucking industry. Pet. 4-5, 19. Deregulation allowed carriers to charge what the market would bear on routes of their choosing, so Congress preempted states from regulating the "price, route, or service of any motor

carrier," 49 U.S.C. § 14501(c)(1), lest the states could undo Congress's deregulation.

But it makes no sense for the scope of preemption to exceed the scope of deregulation. That would, contrary to congressional intent, extend preemption into the realm of truck safety, which was not deregulated in the first place. And that is especially true with respect to state-law governance of freight brokers, whose safety is not regulated at all at the federal level. That is, Congress did not preempt state-law suits against brokers because they were never a target of federal concern to begin with.

ARGUMENT

"Freight brokers are integral to the efficient flow of goods and services." Br. for Leading Indus. Freight Brokers as Amici Curiae Supporting Cert. at 5, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. May 19, 2021) ("Brokers' Br."). They act as employment agencies and dispatchers for the hundreds of thousands of small carriers making up the vast majority of the nation's freight-trucking fleet. Brokers' role in hiring responsible motor carriers can be as critical to public safety as is the carriers' own responsibility to follow federal safety regulations. Preemption of state tort liability would disincentivize brokers from exercising reasonable care in hiring carriers, and victims of truck crashes would go uncompensated.

Part I below shows how carriers and brokers operate, how federal law does (and does not) regulate them, and how they work together to move goods around the country. This part explains that brokers are often the only parties with the financial resources

to provide adequate remedies when their negligent hiring practices lead to crashes. Part II provides examples of crashes in which brokers' negligence left motorists dead or catastrophically injured. Finally, part III explains why, from a federal-preemption perspective, it makes no sense to immunize brokers from state common-law liability.

I. An overview of the freight-trucking industry

More than $940 billion in domestic freight is shipped by commercial trucks every year. Am. Trucking Ass'ns, *Economics and Industry Data*.[2] The industry involves both the motor carriers themselves, who transport the freight, and intermediaries known as freight brokers, who hire the motor carriers and arrange shipping logistics.

The question here is whether federal law immunizes brokers from responsibility for the grievous consequences of truck crashes caused, at least in part, by brokers' negligence in hiring unsafe carriers. That question is important—in 2020, for instance, almost 150,000 people were injured or killed in 400,000 police-reported large-truck crashes. *See* U.S. Dep't of Transp., *Large Truck and Bus Crash Facts 2020* at 13, 22 (2022) ("DOT Report").[3]

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[2] https://www.trucking.org/economics-and-industry-data (last visited Nov. 29, 2023).

[3] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-10/LTBCF%202020-v5_FINAL-09-20-2022%20508%2010-3.pdf.

A. Commercial-truck motor carriers

Size and structure of the industry. Motor carriers range from companies with large truck fleets to self-employed contractors known as "owner-operators" who own and drive the trucks themselves. FMCSA, *The Motor Carrier Safety Planner 6.1*: *Hiring Qualified Drivers*.[4]

Most motor carriers are small players. Ninety percent of carriers operate a fleet of fewer than six trucks, and nearly sixty percent operate just one truck. *See* Am. Trucking Ass'ns, *Ways Congress Can Strengthen the Trucking Workforce*;[5] FMCSA, *2022 Pocket Guide to Large Truck and Bus Statistics* 13 (2022) ("*Pocket Guide*").[6]

Inadequate federal oversight. The Federal Motor Carrier Safety Administration (FMCSA) regulates motor carriers. *See* 49 U.S.C. § 113. Under FMCSA regulations, carriers must maintain safety management controls, *see* 49 C.F.R. § 385.3, sufficient to meet safety requirements and reduce the risk of dangerous safety violations, *see* 49 C.F.R. § 385.5.

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[4] https://csa.fmcsa.dot.gov/safetyplanner/MyFiles/Sections.aspx?ch=23&sec=66 (last visited Nov. 29, 2023).

[5] https://www.trucking.org/news-insights/ways-congress-can-strengthen-trucking-workforce (last visited Nov. 29, 2023).

[6] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-02/FMCSA%20Pocket%20Guide%202022-FINAL%20508%20121922.pdf.

1. Among regulations meant to enhance safety, carriers must follow hours-of-service rules, which concern the maximum hours that drivers may lawfully drive. 49 C.F.R. § 395. Commercial-truck drivers may drive up to sixty hours over seven consecutive days. *Id.* § 395.3(b)(1). They may lawfully work fourteen-hour shifts, eleven hours of which may be spent driving. *Id.* § 395.3(a)(2), (a)(3)(i). These lax rules fail to prevent fatigue-related crashes: between 2001 and 2003, thirteen percent of all large-truck crashes were caused by driver fatigue. FMCSA, *Report to Congress on the Large Truck Crash Causation Study* 15 (2006).[7]

2. Barriers to entering the industry are low. Carriers must register with FMCSA by completing an online form and paying a $300 fee. 49 C.F.R. § 385.303. As discussed further below (at 11-13), applicants may register (and thereafter operate) with only $750,000 in liability insurance. *Id.* § 387.303T(b)(2)(i). Once registered, the carrier is issued an identifying number by the Department of Transportation (DOT). *Id.* § 390.201(c)(2). That number may be used to track the carrier's safety record in an online database. *See* FMCSA, *Do I Need a USDOT Number?*[8] With a carrier's USDOT number, anyone can view information about crashes, roadside inspections, and the carrier's safety rating (discussed immediately

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[7] https://www.fmcsa.dot.gov/safety/research-and-analysis/report-congress-large-truck-crash-causation-study (last visited Nov. 29, 2023).

[8] https://www.fmcsa.dot.gov/registration/do-i-need-usdot-number (last visited Nov. 29, 2023).

below). *See* FMCSA, *Safety and Fitness Electronic Records (SAFER) System*.[9]

3. Once a new carrier satisfies these minor administrative requirements, FMCSA grants the carrier operating authority, and it enters the "new entrant" program. *See* 49 C.F.R. § 385.307. That is, FMCSA presumes the carrier is complying with safety regulations, and the carrier is free to haul commercial freight before any safety vetting. *Id.* This presumption can have grave consequences. New, unvetted carriers can cause fatal crashes immediately after FMCSA grants them operating authority. *See infra* at 20-21 (discussing *Gilley v. C.H. Robinson Worldwide, Inc.*, No. 1:18-cv-00536 (S.D.W. Va.)).

a. Completing the new-entrant program, 49 C.F.R. § 385.307, does not yield a FMCSA safety rating. To obtain a safety rating, a carrier must receive a compliance review from FMCSA, *id.* § 385.9, in which the agency determines whether the carrier meets its safety-fitness standard, *see id.* § 385.5. FMCSA then assigns the carrier a safety rating of "satisfactory," "conditional," or "unsatisfactory." *Id.* § 385 App. B(d).

The reality of the compliance-review scheme is bleak. FMCSA is apparently unable to conduct compliance reviews of carriers within any reasonable timeframe. More than ninety-three percent of all

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[9] https://safer.fmcsa.dot.gov/CompanySnapshot.aspx (last visited Nov. 29, 2023). For example, when USDOT # 2339267 is entered into the search box, the public sees that the motor carrier has two trucks, drove over one million miles in 2022, was inspected once in the last two years, and has been rated "conditional" since 2015.

active carriers remain "unrated" as of 2022. *Pocket Guide* 27.

The repercussions of this presumption-of-safety method of regulation are staggering. FMCSA presumes that motor carriers are safe and in compliance while operating 80,000-pound commercial trucks and driving long distances for long hours, sometimes in inclement weather and unexpected road conditions. Any deficiencies in safety management controls of the almost-650,000 unrated carriers can fly under FMCSA's radar, in many cases for years.

b. In addition to these unrated carriers, 11,000 active carriers have "conditional" ratings, *Pocket Guide* 27, as was true of the prior incarnations of Global Sunrise, the carrier here, *see* Pet. 6. Conditional carriers have been assessed by FMCSA and found not to have "adequate safety management controls in place to ensure compliance with the safety fitness standard." 49 C.F.R § 385.3. Despite their lack of compliance, they may continue hauling freight in large commercial trucks because their inadequate safety controls have not yet led to safety violations. These violations include serious, potentially deadly failures like use of fatigued or unqualified drivers, unsafe driving, motor-vehicle accidents, inadequate vehicle maintenance, and commercial-driver's-license violations. *Id.* § 385.5.

c. Only carriers with an "unsatisfactory" rating—carriers "unfit to continue operating in interstate commerce," FMCSA, *The Motor Carrier Safety Planner 3.6.4: "Conditional" and "Unsatisfactory"*

Safety Ratings[10]—may no longer lawfully operate commercial motor vehicles, *see* 49 C.F.R § 385.13(a). An unsatisfactory rating indicates that a carrier has inadequate "safety management controls in place to ensure compliance with the safety fitness standard which *has* resulted in [safety fitness standard violations]." *Id.* § 385.3 (emphasis added) (defining "unsatisfactory safety rating"). Even then, despite the acute danger these carriers pose to other vehicles, they may continue to operate through the sixty-day period given to make needed safety improvements, *id.* § 385.11(d), before the rating becomes final and FMCSA revokes the carrier's operating authority, *id.* § 385.13(e).

The chameleon-carrier threat. As just discussed, motor carriers with permanent unsatisfactory ratings may not operate in interstate commerce. Carriers are prohibited from using "common ownership, common management, common control, or common familial relationship" to skirt a determination that they must cease interstate operations. 49 C.F.R. § 385.1005. Yet a growing number of suspended motor carriers register illegally under new identities to continue operations and "avoid compliance, or mask or otherwise conceal non-compliance" with regulatory requirements. *Id.*; *see also id.* § 386.73(c); 49 U.S.C. § 13902(a)(1)(C). These carriers—known as

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[10] https://csa.fmcsa.dot.gov/safetyplanner/MyFiles/SubSections.aspx?ch=20&sec=58&sub=103 (last visited Nov. 29, 2023).

chameleon, or reincarnated, carriers—pose a serious threat to road safety. *See generally* U.S. Gov't Accountability Office (GAO), GAO-12-364, *Motor Carrier Safety: New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection* (2012) ("GAO Report").[11]

A 2012 GAO report found that the number of chameleon carriers rose from 759 to 1,136 between 2005 and 2010. GAO Report 15. The safety implications are striking. During the period studied by GAO, 3,778 people were injured or killed in crashes involving chameleon carriers. *See id.* at 17. Eighteen percent of chameleon carriers were involved in a crash resulting in an injury or fatality, compared with six percent of new carriers. *Id.* In other words, reincarnated carriers—carriers that FMCSA previously deemed unfit for continued operation—were three times more likely to pose serious safety concerns.

Why does this carnage persist? As discussed earlier, FMCSA simply lacks the resources to vet all interstate motor carriers that apply for new operating authority. GAO Report 20. Most of the carriers FMCSA screens for reincarnation are passenger and household-goods carriers, which comprise only two percent of all carriers. *Id.* This regulatory gap leaves most commercial-freight carriers to do as they please, subjecting the public to the serious safety hazards posed by chameleons. *Id.*

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[11] https://www.gao.gov/assets/gao-12-364.pdf.

Inadequate liability insurance creates a serious safety risk and leaves victims grossly undercompensated. In 1980, Congress set the minimum liability-insurance level for motor carriers at $750,000, 49 U.S.C. § 31139(b)(2), and has never raised it. Am. Ass'n for Just., *Raise Trucking Insurance Minimums to Raise Safety* (2021).[12] The $750,000 amount was "never set at a sufficiently high level to require insurance companies to seriously underwrite motor carriers and require safe operations before agreeing to insure them." FMCSA, *Minimum Insurance Is a Safety Issue*, at 3 (2015) ("*Minimum Insurance*").[13] And with inflation, FMCSA has noted, the insurance requirement "has become a very sad joke." *Id.*; *see* U.S. Bureau of Lab. Stat., *CPI Inflation Calculator* ($750,000 in 1980 would be approximately $2.8 million dollars today).[14]

The implications of this underinsurance are quite serious. Fatal truck crashes in 2005 cost $3.6 million on average. Eduard Zaloshnja & Ted Miller, *Unit Costs of Medium and Heavy Truck Crashes*, FMCSA,

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[12] https://www.justice.org/resources/research/federal-truck-insurance-2021 (last visited Nov. 29, 2023).

[13] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/MINIMUM%20INSURANCE%20IS%20A%20SAFETY%20ISSUE%20%28291151%29.pdf.

[14] https://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 29, 2023)

at v (2007).[15] The costs of truck crashes often are high because commercial trucks are much larger than the passenger vehicles with which they collide. Semi-trucks can be up to fifty-three feet long, eight feet wide, and 80,000 pounds in weight. *See Minimum Insurance* 2. By contrast, a Honda Accord, a typical passenger sedan, is sixteen feet long and weighs 3,200 pounds.[16] Thus, most victims of fatal crashes involving large trucks are people in much-smaller passenger vehicles. *See* DOT Report 22.

Because motor carriers are commonly small companies or individual owner-operators with few resources, *see supra* at 6, they often carry only the minimum of $750,000 of insurance. And motor carriers faced with lawsuits alleging that their negligence caused injury and death may declare bankruptcy and reincarnate themselves under a different identity. *See, e.g.*, *infra* at 17-18, 20-21 (discussing case examples); *supra* at 10-11 (discussing chameleon-carrier problem). The factors just discussed combine to make fair recovery against carriers difficult or impossible in many cases.

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[15] https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/UnitCostsTruck%20Crashes2007.pdf. This cost estimate "exclude[s] mental health care costs for crash victims, roadside furniture repair costs, cargo delays, earnings lost by family and friends caring for the injured, and the value of schoolwork lost." *Id.*

[16] https://www.headquarterhonda.com/research/new-honda-accord-weight-dimensions/ (last visited Nov. 29, 2023).

B. Freight brokers

Freight brokers are the other part of the commercial-trucking story. Though shippers—the companies whose goods must be moved—can hire motor carriers directly, they increasingly use freight brokers to do so. *See* C.H. Robinson Worldwide, Inc., *May 2023 Investor Presentation* 10 (2023) ("CHR Presentation").[17]

Brokers "arrang[e] for[] transportation by motor carrier[s] for compensation." 49 U.S.C. § 13102(2). For shippers, particularly small shippers with fewer resources, brokers take a major logistical burden off their hands; for carriers, brokers deliver convenient access to a wider array of shippers than carriers could reach on their own. *See* Br. for Nat'l Ass'n of Mfrs. et al., as Amici Curiae Supporting Pet'r at 8, *C.H. Robinson Worldwide, Inc., v. Miller*, No. 20-1425 (U.S. May 19, 2021). By necessity, brokers and carriers work closely together: brokers "have extensive information about prices, routes, and locations of truck resources and loads," *id.* at 10, and they "typically stay[] in communication with the carrier regarding shipment logistics from pick-up to delivery," *id.* at 9.

Brokers earn profits through the "spread": the difference between the fees they charge shippers for arranging transportation and the prices they pay motor carriers to haul the goods. The less a motor carrier charges, the more profit the broker earns. Brokers are therefore incentivized to find the cheapest

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[17] https://investor.chrobinson.com/News-and-Events/Presentations/Presentation-details/2023/CHRW-May-2023-Investor-Presentation-2023-dy5Lb5fCae/default.aspx (last visited Nov. 29, 2023).

carriers, and carriers are incentivized to cut corners so they can offer the lowest prices. *See* Pet. 18. This reality can lead brokers to hire carriers that ignore hours-in-service regulations, skimp on driver training, forgo vehicle maintenance, or take other shortcuts that make their operations dangerous. *See infra* at 17-23 (discussing case examples).

In 1975, just seventy freight brokers operated in the United States. Jeffrey S. Kinsler, *Motor Freight Brokers: A Tale of Federal Regulatory Pandemonium*, 14 Nw. J. Int'l L. & Bus. 289, 298 (1993). In the wake of trucking deregulation in 1980, *see* Pet. 5, the broker industry exploded. Today, 28,000 brokers operate nationally. *Pocket Guide* 10. In this century alone, the percentage of the freight market handled by brokers has more than tripled. CHR Presentation 10. In 2022, eighty-two percent of shippers used brokers to transport their goods. *See* Merrill Douglas, *2022 Inbound Logistics Perspectives: 3PL Market Research Report*, Inbound Logistics (July 2022).[18]

Today, the leading brokers are big businesses. The largest broker, C.H. Robinson Worldwide, took in more than $15 billion in gross revenue in 2022. Transport Topics, *Top 100 Logistics*.[19] WWEX Group, which owns respondent GlobalTranz, brought in $4.9 billion. *Id.*[20]

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[18] https://www.inboundlogistics.com/articles/2022-inbound-logistics-perspectives-3pl-market-research-report/ (last visited Nov. 29, 2023).

[19] https://www.ttnews.com/logistics/freightbrokerage/2023 (last visited Nov. 29, 2023).

[20] At the time the cited webpage was published, WWEX Group was named Worldwide Express.

Brokers are subject to minimal federal regulation. New brokers must apply for operating authority from FMCSA, *see* 49 C.F.R. § 365, and meet a handful of routine administrative requirements, *id.* § 371. But, as the brokers themselves, including respondent GlobalTranz, have emphasized to this Court: "FMCSA has never imposed *any* requirements upon freight brokers to oversee motor carrier safety." Brokers' Br. 21; *see id.* at 13, 20.

Brokers thus have no federal obligation to ensure that the carriers they hire have obeyed federal regulations or gone through required training and testing. If a carrier is unrated, *see supra* at 8-9, brokers do not have to conduct their own inquiry into the carrier's hiring practices or check whether it is a chameleon carrier. If a carrier is conditionally rated—that is, when FMCSA has affirmatively determined the carrier lacks the controls to prevent safety violations, *see supra* at 9—brokers have no obligation to check records and see if the carrier has fixed its problems. As far as federal law is concerned, brokers may operate as they wish and hire any carrier not rated unsatisfactory, regardless of the carrier's safety record or the danger it poses to the public.

As we now show, this lack of federal oversight can lead to calamitous results.

II. Hiring unsafe carriers leads to horrific, often deadly results.

The dangers of broker negligence are real and significant. The following cases provide a few examples of the numerous, often-deadly crashes

involving negligent hiring of carriers by brokers.[21] In each case, evidence indicates that brokers knew or should have known of the unsafe records of the carriers but hired them nonetheless.

A. *Ye v. Global Sunrise Inc.*, No. 1:18-cv-01961 (N.D. Ill.). The case now before this Court provides a tragic example of how some brokers enable dangerous carriers. Global Sunrise, the carrier whose vehicle struck petitioner's husband, Shawn Lin, was a chameleon carrier whose owners had previously founded two other trucking companies. *Ye*, N.D. Ill., ECF 55 at 3-4. Both predecessors had received conditional safety ratings from FMCSA, which cited the companies' trucks for numerous safety violations. *Id.* Like the carriers from which it sprang, Global Sunrise committed serial violations, *id.* at 5-6, and inspectors took many of its trucks and drivers off the road, *id.* at 6. Global Sunrise even leased its trucks from one of the other carriers run by its owners, *id.* at 4—that is, Global Sunrise's fleet was the same fleet FMCSA had already cited for safety violations, *see* Pet. 6.

Global Sunrise's record of safety violations was available on FMCSA's website, *Ye*, N.D. Ill., ECF 55 at 5, as was ownership information that could have demonstrated Global Sunrise's chameleon status, *see*

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[21] When citing district-court documents in this part of the brief, we name the case, the district court, and the relevant ECF docket entry and ECF page number: *e.g.*, *Ye*, N.D. Ill., ECF 55 at 5.

FMCSA, *Safety Measurement System*;[22] *supra* at 7-8 & n.9 (discussing the public availability of carrier-specific FMCSA safety information). Though respondent GlobalTranz knew or should have known about Global Sunrise's safety history and chameleon-carrier status, *Ye*, N.D. Ill., ECF 55 at 7, it hired the carrier to haul goods from Illinois to Texas, *id.* at 4. The driver, fatigued from driving illegally long hours, *id.* at 9, made a right turn across two lanes of traffic without checking his mirrors, striking the motorcycle driven by Shawn Lin, *id.* at 6, 8-9; *see* Pet. 6-7.

Lin suffered multiple broken bones, "traumatic cardiac arrest, respiratory failure, and anoxic brain injury." *Ye*, N.D. Ill., ECF 119 at 2. He never regained consciousness and died two weeks later. *Id.* The district court awarded Lin's widow, petitioner Ye, a $10 million default judgment against Global Sunrise, *id.* at 1, but by that time the carrier had dissolved, Off. of Ill. Sec'y of State, *Business Entity Search*.[23] If GlobalTranz is correct that Congress immunized it from liability, and Ye cannot recover from GlobalTranz for its negligence, she cannot recover at all.

B. *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-cv-00102 (W.D. Va.). Nova Express was unfit to

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[22] https://ai.fmcsa.dot.gov/SMS (last visited Nov. 29, 2023). Each carrier's data includes a business address at the top of the page and a link to further registration details, including phone numbers and email addresses.

[23] https://apps.ilsos.gov/businessentitysearch/businessentitysearch (last visited Nov. 29, 2023).

be a motor carrier in every way—and obviously so. From 2011 to 2014, it accumulated violation after violation for false log reports, reckless driving, driving with a suspended license, and large numbers of safety violations ranging from inoperative brakes to worn-out tires. *See Mann,* W.D. Va., ECF 1 at 5; *Johnson v. C.H. Robinson Worldwide, Inc.*, No. 7:16-cv-00140 (W.D. Va.), ECF 31-8a.[24]

DOT statistics showed that Nova was consistently among the worst carriers in the country for vehicle maintenance and unsafe driving. *Johnson*, W.D. Va., ECF 31 at 5-6. Just a month before the crash at issue, FMCSA revoked Nova's operating authority. *Id.* at 4. Phil Embiata, Nova's co-owner, admitted he had been fired by multiple clients, once because he was caught with alcohol in his truck. *Mann v. C.H. Robinson Worldwide, Inc.*, 2017 WL 3191516, at *2 (W.D. Va. July 27, 2017). Shockingly, and presumably to keep costs down, C.H. Robinson still hired Nova to haul goods across the country, *Mann*, 2017 WL 3191516 at *3, contrary to numerous written objections from C.H. Robinson's own employees, *Johnson*, W.D. Va., ECF 31 at 5.

Embiata was driving a C.H. Robinson-brokered load on a Virginia highway when he lost control of his truck, possibly because he had fallen asleep. *Mann*, 2017 WL 3191516 at *1. This was no surprise. Embiata was driving illegally long hours, and the truck was shoddily maintained. *Mann*, W.D. Va., ECF 1 at 3. Its brakes "were dangerously out of adjustment,

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[24] After C.H. Robinson moved for summary judgment, Mann's husband joined the response filed by Jeremy Johnson, a co-plaintiff in the consolidated lawsuits arising from the crash.

the trailer's suspension was in dangerous disrepair, and the tires on the tractor and trailer were dangerously worn." *Id.*

The truck plowed through the guardrails, over the median, and then tipped over, blocking traffic across the highway in the 3 a.m. darkness. *Mann*, 2017 WL 3191516 at *1. A few minutes later, Tanya Mann died after crashing into the overturned truck. *Id.* On the other side of the highway, another truck ran over a piece of the destroyed guardrail and plunged over an overpass; the driver burned to death in the fiery wreckage, and his passenger was badly burned and injured. *Id.* C.H. Robinson's motion for summary judgment on Mann's negligent-hiring claim was denied, *id.*, and the broker later settled, *Mann*, W.D. Va., ECF 81.

C. *Gilley v. C.H. Robinson Worldwide, Inc.*, No. 1:18-cv-00536 (S.D.W. Va.). J&TS Transport Express received FMCSA authority to operate in 2016. *Gilley*, S.D.W. Va., ECF 199 at 23. By their own admission, J&TS's owners were unqualified to run a trucking business. "[I]t was just wrong," one of the co-owners testified. *Id.* at 22 n.70. "Everything we did. Everything we tried. I mean, just from day one it was a fail." *Id.* Yet, just three days into J&TS's existence, and without conducting any safety investigation into the new company, *id.* at 2, mega-broker C.H. Robinson signed a broker-carrier agreement with J&TS, *id.* at 23.

A few months later, J&TS hired Bertram Copeland as its sole driver. *Gilley*, S.D.W. Va., ECF 199 at 24. The company provided Copeland with no training or safety rules, failed to investigate his driving record, and overlooked his repeated

falsification of hours-of-service records. *Id.* Just three weeks into his employment, already fatigued from days of overdriving, Copeland drifted across the median of a highway in West Virginia. *Id.* at 26. His truck, a poorly maintained vehicle with burned-out brakes, smashed into a car driving from the opposite direction before rolling over and catching fire. *Gilley*, S.D.W. Va., ECF 85 at 5. The entire Gilley family—husband, wife, and two children—died in the crash. *Id.* J&TS declared bankruptcy while litigation over the crash was ongoing, thus evading responsibility for its negligence. *Gilley*, S.D.W. Va., ECF 121 at 1. C.H. Robinson settled. *Gilley*, S.D.W. Va., ECF 360.

D. *Dixon v. Stone Truck Line, Inc.*, No. 2:19-cv-00945 (D.N.M.). Stone Truck Line was a California-based motor carrier with a history of unsafe operations. In October 2018, Stone had recently been in numerous serious crashes, including one fatal crash. *Dixon*, D.N.M., ECF 178 at 11. Its federally mandated insurance policies had been revoked by insurers, *id.*, and Stone had received multiple DOT warnings about its unsafe-driving and hours-of-service violations, *id.* at 8. Broker Ryan Transportation hired Stone to haul goods despite knowing the carrier's record. *Id.* at 8-9.

Ryan's negligent hiring of Stone led to a gruesome crash. The driver of the Stone truck was untrained, fatigued, and driving in violation of hours-of-service requirements, *Dixon*, D.N.M., ECF 178 at 12, 21, when he made an illegal left turn across a road, striking a motorcycle driven by Walter Dixon, *Dixon*, D.N.M., ECF 107 at 9. The crash shattered Dixon's body. *See id.* at 9-10. Dixon was airlifted to a trauma center and placed in a medically induced coma, endured six

surgeries, and remained in medical facilities for more than three months. *Id.* at 10-11. The crash caused "permanent impairment and disabilities." *Id.* at 9. Dixon's negligent-hiring claim against Ryan survived summary judgment, *Dixon v. Stone Truck Line, Inc.*, 2021 WL 5493076, at *7-8 (D.N.M. Nov. 23, 2021), and Ryan later settled, *Dixon*, D.M.N., ECF 187.

E. *Rohlf v. Milosevic*, No. 5:17-cv-04004 (N.D. Iowa). In October 2016, Forward Air, a broker, and U.S. Expediters, a new carrier, entered a broker-carrier agreement. *Scott v. Milosevic,* 372 F. Supp. 3d 758, 763 (N.D. Iowa 2019). The agreement required Expediters to maintain an "active and effective safety program" and ensure that its drivers were licensed and trained. *Id.* Expediters provided no information about its drivers and lied about the number of trucks it had available, but Forward made no further inquiries, *Rohlf*, N.D. Iowa, ECF 102 at 6-7, and approved Expediters for hire, *Scott*, 372 F. Supp. 3d at 764. Over the next two months, Expediters racked up federal safety violations for unsafe driving, vehicle-maintenance problems, and disregarding hours-of-service rules. *Rohlf*, N.D. Iowa, ECF 102-8 at 66-73.

Nonetheless, Forward used Expediters to haul a truckload of mail. *Rohlf*, N.D. Iowa, ECF 24 at 4. Expediters' driver attempted to pass a car on a foggy two-lane highway in "near-zero visibility." *Id.* His truck, carrying nearly 30,000 pounds, smashed head-first into a pickup truck traveling in the opposite direction. *Id.* The driver, Gary Rohlf, was severely injured; Sharon Rohlf, Gary's wife, died at the scene. *Id.* at 4-5. The court noted the "red flags" thrown up by Expediters' record and the lack of evidence that Forward had independently vetted Expediters, *Scott*,

372 F. Supp. 3d. at 768, leading the court to reject Forward's motion for summary judgment on the plaintiffs' negligent-hiring claim, *id.* at 770. The defendants, including Forward, later settled. *Rohlf*, N.D. Iowa, ECF 139.

* * *

Having reviewed these examples of highway tragedy—each avoidable if carriers and brokers had acted responsibly, consistent with state-law duties of reasonable care—it's worth pausing to appreciate the upshot of the freight brokers' position. GlobalTranz and the rest of the freight-broker industry maintain that even if these real-life calamities were indisputably caused by their conduct, and even if state law would consider their conduct negligent, they are immune because Congress ordained that result, even though federal law does not regulate their safety one whit. As we now show, that is not right.

III. Congress did not preempt state safety obligations for freight brokers.

As shown, the commercial-trucking industry is one of underregulated motor carriers and unregulated freight brokers. Motor carriers are overseen by an agency that cannot keep up with the volume of new entrants or adequately enforce safety mandates. Carriers thus lack adequate incentives not to flout safety rules. And, as explained, they often lack the resources or insurance to make whole the people they have harmed. Brokers, who work hand-in-hand with carriers and often have the finances to make good on remedies, face no federal safety requirements at all.

With these facts in mind, if you asked any member of Congress whether they intended to insulate freight brokers from state negligence suits arising from deadly truck crashes when they deregulated the industry's "price[s], route[s], and service[s]," 49 U.S.C. § 14501(c)(1), the obvious answer would be "no." The FAAAA's purpose was *economic* deregulation of the trucking industry, *see City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 440-41 (2001); Pet. 5, not tort "reform." It would make no sense for the scope of preemption to exceed the scope of deregulation and override safety-based common-law remedies.

The question remains, however, whether Congress inadvertently preempted suits such as petitioner Ye's when it enacted the FAAAA's preemption provision, 49 U.S.C. § 14501(c). It did not. The petition powerfully explains why, under the preemption provision's safety exception, tort suits based on brokers' negligent hiring of unsafe motor carriers are not preempted. Pet. 11-17.

We make just two points here. First, the relevant inquiry under the safety exception—which preserves the state's "safety regulatory authority … with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)—is whether the state-law duty relied on concerns a connection between safety and motor vehicles. If so, federal law may not "restrict" any aspect of state-law authority. *Id.* The inquiry has nothing to do with the relationship between *brokers* and motor vehicles, though the Seventh Circuit erroneously thought otherwise. *See* Pet. 12-13. Because a state-law duty regarding the hiring of safe motor-vehicle drivers obviously concerns both motor vehicles and safety, it doesn't matter what

that duty entails (beyond safety) or on *whom* it is imposed. *See* Pet. 14. In all events, the state-law safety duty is not preempted—*for motor carriers and brokers alike*.

Second, the broker industry maintains that it should benefit from preemption because it, unlike the motor-carrier industry, is not subject to any federal safety regulation. *See* Brokers' Br. 21. That gets things backwards. Preemption of state law is a tradeoff for federal regulation (or, as relevant here, deregulation). Thus, for instance, when Congress decided to regulate the safety of medical devices, it preempted state law on topics subject to intensive federal regulation. *See Riegel v. Medtronic, Inc.*, 552 U.S. 312, 317-20, 322-23 (2008). On the other hand, when federal device regulation on a particular topic is nonexistent (or lax), state law on that topic is not preempted. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 492-502 (1996); *see also, e.g.*, *Freightliner Corp. v. Myrick*, 514 U.S. 280, 286-87 (1995) (no preemption of state law regarding a particular topic of passenger-vehicle safety because no federal standard existed on that topic).

Here, given the FAAAA's focus on federal economic deregulation of prices, routes, and services, state *safety* regulation was not a target of preemption because it was not a subject of deregulation. The safety exception simply underscores this basic understanding: Congress would not seek to preempt that which it didn't deregulate in the first place.

If that's true for motor carriers—and it is—then it's doubly true for freight brokers. Brokers are not subject to any federal safety regulation to begin with. So, there's not an even arguable tradeoff between

federal regulation and preemption of state law. Put otherwise, Congress didn't preempt the state's safety authority as to brokers because brokers weren't on its radar screen at all.

For this reason, as well as the others discussed above and in the petition, this Court should grant review and reverse.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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