No. 23-475

In the Supreme Court of the United States

YING YE, PETITIONER

v.

GLOBALTRANZ ENTERPRISES, INC.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Federal Aviation Administration Authorization Act (FAAAA) preempts any "[state] law, regulation, or other provision" that is "related to a price, route, or service of any motor carrier * * * or * * * broker." 49 U.S.C. 14501(c)(1). Another provision—commonly known as the "safety exception"—preserves the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). The question presented is:

Whether a common-law negligent-hiring claim against a freight broker, seeking redress for personal injuries caused by a motor carrier's driver, is preempted because it does not constitute an exercise of the "safety regulatory authority of a State with respect to motor vehicles" within the meaning of the FAAAA's safety exception.

CORPORATE DISCLOSURE STATEMENT

Respondent GlobalTranz Enterprises, Inc., was converted from a corporation to a limited liability company before it was added to this case as a defendant. GlobalTranz Enterprises, LLC, is a wholly owned indirect subsidiary of Accord Guarantor, LLC. No publicly held company holds a 10% or greater interest in Accord Guarantor, LLC.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 74 F.4th 453. The opinion of the district court (Pet. App. 24a-35a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 2023. A petition for rehearing was denied on August 16, 2023 (Pet. App. 36a-37a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 14501(c) of Title 49 of the United States Code provides in relevant part:

(1) General rule. — Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier * * * or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) Matters not covered. — Paragraph (1) —

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization[.]

STATEMENT

1. In 1994, Congress enacted the Federal Aviation Administration Authorization Act (FAAAA) to preempt certain state regulation of the transportation industry, including the trucking industry. The preemption provision for the trucking industry is codified at 49 U.S.C. 14501(c) and is titled "Motor Carriers of Property." As amended, Section 14501(c) provides that a State may not "enact or enforce a law, regulation, or other provision having the force and effect of law" if it is "related to a price, route, or

service of any motor carrier * * * or * * * broker." 49 U.S.C. 14501(c)(1).

As this Court has explained, the purpose of that provision is to ensure that "rates, routes, and services" in the transportation industry reflect "maximum reliance on competitive forces." *Rowe* v. *New Hampshire Motor Transport Association*, 552 U.S. 364, 370-371 (2008) (citation omitted). The language of the provision is thus broad, preempting state laws that have a "connection with" or "reference to" the prices, routes, or services of a motor carrier or broker. *Id.* at 370 (emphases omitted). The connection may be "indirect," and a state law will be preempted as long as it has a "significant impact" on the FAAAA's "deregulatory and pre-emption-related objectives." *Id.* at 370-371 (internal quotation marks and citations omitted).

At the same time, the FAAAA preserves a sphere of state regulation. The second half of Section 14501(c) lists three express exceptions to the preemption provision in the first half. The first, and most relevant here, saves from preemption "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. 14501 (c)(2)(A). The Court has explained that this "safety exception" preserves the "traditional state police power over safety," including the power to ensure "safety on municipal streets and roads." *City of Columbus* v. *Ours Garage and Wrecker Service, Inc.*, 536 U.S. 424, 439-440 (2002).

2. Respondent is a federally registered freight broker—an entity hired by a shipper to arrange for the transportation of property, ordinarily across state lines. The broker hires a motor carrier to conduct the transportation, and the motor carrier in turn employs a driver to transport the cargo by motor vehicle. As a freight broker, respondent neither owns nor operates any vehicles. Pet. App. 2a, 25a, 31a.

In 2017, respondent brokered a load to Global Sunrise, a motor carrier registered with the Federal Motor Carrier Safety Administration, to be transported from Illinois to Texas. While completing the shipment, the truck driver hired, qualified, and retained by Global Sunrise collided with a motorcycle operated by petitioner's husband. Two weeks later, he died from injuries sustained in the crash. Pet. App. 2a; Resp. C.A. App. 23-25.

On March 19, 2018, petitioner, in her capacity as the representative of her husband's estate, filed suit against Global Sunrise in the United States District Court for the Northern District of Illinois. The complaint alleged claims for negligent hiring and vicarious liability under Illinois law. Subsequently, petitioner amended her complaint to assert the same claims against respondent in connection with its role as the broker that hired Global Sunrise. Petitioner alleged that respondent was negligent in selecting Global Sunrise as a motor carrier and thereby proximately caused petitioner's husband's death. Petitioner also alleged that respondent exercised sufficient control over Global Sunrise to be vicariously liable for Global Sunrise's and the truck driver's negligence. Pet. App. 2a-3a.

3. Respondent moved to dismiss the claims against it. Pet. App. 3a. The district court granted the motion as to petitioner's negligent-hiring claim and denied it with respect to the vicarious-liability claim. *Id.* at 24a-35a.

With respect to negligent hiring: the district court held that the express preemption provision in Section 14501(c)(1) covered the claim and that no exception to the provision applied. Pet. App. 28a-33a. The court reasoned that, even though state common law "does not expressly reference freight brokers," a negligent-hiring claim under state common law "seeks to shape how freight brokers perform their services." *Id.* at 30a. Enforcing such a

claim, the court explained, would thus have "a significant economic impact" on broker services, "thwart[ing] the deregulatory objective of the FAAAA." *Id.* at 31a. And because a negligent-hiring claim bears only "an attenuated connection to motor vehicles," the court concluded that applying the safety exception to such a claim would require an unduly "expansive reading" of the exception. *Ibid.*

With respect to vicarious liability: the district court determined that it could not dispose of the claim at the pleading stage, because petitioner had alleged sufficient facts that, if true, would show that respondent had the right to control how Global Sunrise and the driver operated motor vehicles. Pet. App. 33a-35a. After discovery, however, the court entered summary judgment for respondent on that claim as well. *Id.* at 4a.[*]

4. Petitioner appealed only the dismissal of her negligent-hiring claim, and the court of appeals affirmed. Pet. App. 1a-23a. The court of appeals first agreed with the district court that petitioner's negligent-hiring claim fell within the scope of the FAAAA's express preemption provision in Section 14501(c). *Id.* at 6a-10a.

The court of appeals then held that the claim was not subject to Section 14501(c)'s safety exception. Pet. App. 10a-23a. In interpreting that exception, the court of appeals began by noting that, under *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251 (2013), the phrase "with respect to motor vehicles" in Section 14501(c)(2)(A) "massively limits the scope" of the safety exception. Pet. App.

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[*] The district court entered default judgment against Global Sunrise for failure to obtain new counsel after its previous counsel withdrew. The court awarded petitioner $10 million in damages on the claims against Global Sunrise. Pet. App. 3a. That award does not affect the claims against respondent.

11a (citation omitted). The court then proceeded to analyze the nature of the connection between a negligent-hiring claim against a freight broker and motor-vehicle safety.

Focusing on the statutory text, the court of appeals noted that neither the safety exception nor the statutory definition of the phrase "motor vehicles" makes any mention of brokers. Pet. App. 12a. The court also canvassed other parts of the FAAAA, highlighting instances in which Congress expressly included broker services in particular provisions. *Id.* at 13a. The court reasoned that Congress's decision not to include a safety exception in Section 14501(b), which concerns the preemption of certain state-law claims against "Freight Forwarders and Brokers," indicated a "purposeful separation between brokers and motor vehicle safety." *Id.* at 14a.

Turning next to the "practical realities" of petitioner's claim, the court of appeals explained that any attempt to connect respondent to issues of motor-vehicle safety required adding "an extra link" to the causal chain: "petitioner's negligent hiring of Global Sunrise resulted in Global Sunrise's negligent entrustment of a motor vehicle to a negligent driver who, in turn, caused a collision that resulted in [petitioner's husband's] death." Pet. App. 14a. But adding such an "additional link," the court reasoned, "goes a bridge too far." *Ibid.* Because of Congress's intentional separation of freight brokers and motor-vehicle safety, the court concluded, the safety exception requires a "direct link" between the relevant state regulatory authority and motor-vehicle safety. *Id.* at 18a.

The court of appeals recognized that, "at a higher level of generality," brokers have "some relationship" to "considerations of motor vehicle safety." Pet. App. 15a. But the court was skeptical that Congress "authorized such a

broad reading of the safety exception," and petitioner offered "no limiting principle of her own." *Ibid.* The court found further support for its narrower interpretation of the safety exception in other federal statutory and regulatory provisions governing motor-vehicle safety, none of which impose obligations on freight brokers. *Id.* at 15a-18a.

5. A petition for rehearing was denied without recorded dissent. Pet. App. 37a.

ARGUMENT

In the decision below, the Seventh Circuit acknowledged it was creating a conflict with the Ninth Circuit on the question presented. Although that question is one of considerable importance to the transportation industry, the Seventh Circuit reached the correct result, and the resulting conflict is shallow. For those reasons, the Court may wish to allow additional percolation of the question presented before granting plenary review.

1. As the Seventh Circuit recognized, it adopted an interpretation of the FAAAA's safety exception that was "narrower" than the Ninth Circuit's interpretation in *Miller* v. *C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (2020), cert. denied, 142 S. Ct. 2866 (2022). Pet. App. 23a.

a. The Ninth Circuit's decision in *Miller* involved "near-identical" facts to those at issue here. Pet. App. 20a. In *Miller*, a federally registered freight broker hired a federally registered motor carrier to transport cargo. 976 F.3d at 1020. While delivering the cargo, the motor carrier's driver collided with a vehicle on a Nevada highway, resulting in severe injuries to the other driver. *Ibid.* The injured driver filed suit against the freight broker, alleging negligent hiring under Nevada common law. *Id.* at 1020-1021.

The Ninth Circuit held that the FAAAA did not preempt the plaintiff's state-law claim. See 976 F.3d at 1031. As did the Seventh Circuit in the decision below, the Ninth Circuit first held that a claim for negligent hiring falls within the scope of the express preemption provision in the first half of Section 14501(c). See *id.* at 1024-1025. Turning to the safety exception in the second half, the Ninth Circuit began by addressing a question that the Seventh Circuit did not reach in this case: namely, whether the state "safety regulatory authority" preserved by the safety exception includes a common-law claim for negligent hiring against a freight broker. *Id.* at 1026-1029; see Pet. App. 11a. Construing the safety exception "broadly," in part based on the presumption against preemption, the Ninth Circuit determined that the answer was yes. See 976 F.3d at 1028.

The Ninth Circuit then addressed whether such a claim involved the exercise of state regulatory authority "with respect to motor vehicles." See 976 F.3d at 1030. The court concluded that there was a sufficient connection between a freight broker's allegedly negligent hiring and motor vehicles to satisfy the safety exception. See *id.* at 1031. Citing circuit precedent, the court started from the proposition that the phrase "with respect to" in the safety exception is "synonymous" with the phrase "relating to" in the preemption provision. See *id.* at 1030. Accordingly, the court treated the exception as saving any state safety regulation bearing " 'a connection with' motor vehicles, whether directly or indirectly." *Ibid.* (quoting *Dan's City Used Cars*, 569 U.S. at 260). To that end, the court noted that it had previously extended the safety exception to cover criminal-history disclosure requirements for tow-truck drivers. *Ibid.*; see *California Tow Truck Association* v. *City & County of San Francisco*, 807 F.3d 1008 (9th Cir. 2015). If those requirements had the requisite

"connection with" motor vehicles, the court reasoned, "then negligence claims against brokers that arise out of motor vehicle accidents must as well," given that "both promote safety on the road." 976 F.3d at 1030.

Judge Fernandez concurred in part and dissented in part. See 976 F.3d at 1031-1032. He joined the portions of the majority's opinion concluding that the plaintiff's claims fell within the scope of the preemption provision in Section 14501(c) and that common-law tort claims form part of the state safety regulatory authority preserved by the safety exception. See *id.* at 1031. But he dissented from the conclusion that negligence claims against freight brokers were sufficiently connected to motor vehicles to satisfy the exception. See *id.* at 1031-1032. In his view, a claim against a freight broker—as opposed to a motor carrier or driver—does *not* operate "with respect to motor vehicles." *Ibid.* That is because the connection between a broker's actions and the "actual operational safety of motor vehicles" is "too remote." *Id.* at 1031. A contrary conclusion, he warned, would "conscript brokers" into a "parallel regulatory regime," requiring that they "evaluate and screen motor carriers" according to the "varied common law mandates of myriad states." *Id.* at 1032.

b. In the decision below, the Seventh Circuit rejected the conclusion that negligence claims against freight brokers constitute state authority "with respect to motor vehicles." Pet. App. 11a-19a. The Seventh Circuit acknowledged that its interpretation of the safety exception conflicted with the Ninth Circuit's, and it offered three reasons to justify that departure. See *id.* at 20a-23a. *First*, the court reasoned that the Ninth Circuit had "unduly emphasized" statutory purpose over statutory text. *Id.* at 21a. *Second*, the court declined to rely on any presumption against preemption, as the Ninth Circuit had done.

See *id.* at 22a. *Third*, the court rejected the Ninth Circuit's conclusion that the phrase "with respect to" in the safety exception is coterminous with the phrase "relating to" in the preemption provision. See *id.* at 22a-23a.

The Seventh Circuit also noted that its interpretation of the safety exception aligned with the Eleventh Circuit's decision in *Aspen American Insurance Co.* v. *Landstar Ranger, Inc.*, 65 F.4th 1261 (2023). Although that case involved an allegation that a broker's negligent hiring resulted in theft of the cargo, rather than physical injury, the Eleventh Circuit broadly reasoned that "the phrase 'with respect to motor vehicles' limits the safety exception's application to state laws that have a *direct* relationship to motor vehicles." *Id.* at 1271. In the Eleventh Circuit's view, the "indirect connection" between a negligent-hiring claim and a state's regulation of motor vehicles is insufficient to trigger the safety exception. *Ibid.*

2. Unlike the Ninth Circuit in *Miller*, the Seventh Circuit correctly held that the safety exception does not apply to negligent-hiring claims against freight brokers related to physical injuries caused by the motor carrier's driver.

a. The safety exception creates a carve-out from the express preemption provision in Section 14501(c)(1) for state safety regulatory authority "with respect to motor vehicles." 49 U.S.C. 14501(c)(2)(A). As the Seventh Circuit correctly held, that exception does not cover negligent-hiring claims against freight brokers.

i. That holding follows directly from the statutory text. In *Dan's City Used Cars*, *supra*, this Court interpreted the phrase "with respect to," as used in Section 14501(c)(1), to mean "concern[ing]," thereby placing a limitation on the language that precedes the phrase. 569 U.S. at 261. Congress's use of the phrase "with respect to transportation of property" in Section 14501(c)(1) thus

"massively limits the scope of preemption" under the FAAAA. *Ibid.*

Congress's use of that same phrase in the safety exception has a similar limiting effect. By saving only state safety regulatory authority "with respect to motor vehicles," Congress created a narrow exception only for state safety authority concerning motor vehicles. And because Title 49 defines the phrase "motor vehicle" to mean a "vehicle, machine, tractor, trailer, or semitrailer * * * used on a highway in transportation," 49 U.S.C. 13102(16), it follows that the safety exception applies only to state regulatory authority concerning the safe use of a vehicle on a highway in transportation.

Freight brokers do not "use[]" any vehicle "on a highway for transportation" as part of their ordinary course of business. Instead, they "arrang[e]" transportation "by motor carrier." 49 U.S.C. 13102(2). The "motor carrier," which actually "provid[es] motor vehicle transportation," 49 U.S.C. 13102(14), then hires and selects a driver—and it is that driver who "uses" the vehicle on a highway in transportation. In addition, neither the safety exception itself, nor the definition of "motor vehicle" in Title 49, refers to freight brokers. That indicates that negligent-hiring claims against freight brokers "may be outside the scope of the exception's plain text." Pet. App. 12a.

Statutory context confirms the natural reading of the text. The preemption provision in Section 14501(c)(1) expressly refers to "brokers," whereas the safety exception does not. The safety exception's neighboring provision, Section 14501(b), also refers specifically to brokers: it is titled "Freight Forwarders and Brokers," and (as the title suggests) it provides additional preemption for certain laws applicable to freight forwarders and brokers. 49 U.S.C. 14501(b)(1). When Congress wanted a provision of

the FAAAA to apply to laws or regulations relating to brokers, therefore, it explicitly used the word "brokers." The absence of any reference to brokers in the safety exception thus suggests an intentional choice by Congress. See, *e.g.*, *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 361 (2019).

What is more, subsection (b) of Section 14501 broadly preempts claims related to "intrastate services of any * * * broker," without providing any safety exception. 49 U.S.C. 14501(b)(1) (emphasis added). To interpret the limiting language in the safety exception as extending to interstate regulations of brokers would ascribe to Congress the peculiar intent to preempt all *intrastate* broker regulations, but not all *interstate* broker regulations. Nothing in the statute supports that outcome.

ii. In petitioner's view, negligent-hiring claims against freight brokers are not preempted because the safety exception applies to any safety law that bears any "obvious connection" to motor vehicles. Pet. 12. But were such a connection alone sufficient, the phrase "with respect to motor vehicles" would render other parts of the statute superfluous. See, *e.g.*, *Ysleta Del Sur Pueblo* v. *Texas*, 142 S. Ct. 1929, 1939 (2022). For example, another clause in the same provision saves the authority of a State to "impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo." 49 U.S.C. 14501(c)(2)(A). Such authority also bears a connection to motor vehicles and would thus already be covered by the safety exception under petitioner's interpretation. See *Aspen*, 64 F.4th at 1271-1272.

Petitioner's critiques of the Seventh Circuit's decision miss the mark. Contrary to petitioner's suggestion (Pet. 12-14, 16-17), the Seventh Circuit did not ignore the relationship between the state regulatory authority at issue and motor vehicles. Instead, it concluded that *negligent*

hiring by a broker bears only an "indirect" connection to motor-vehicle safety. See Pet. App. 14a.

Nor was the Seventh Circuit incorrect to rely on the fact that the safety exception and the definition of "motor vehicle" do not mention freight brokers, as petitioner contends. See Pet. 14-15. Petitioner argues that, "if the safety exception did not apply to laws regulating entities that are not named in the exception or in the definition of motor vehicle, the exception would not apply to any laws." Pet. 14. But that ignores the breadth of the preemption provision: a state law can be "related to" the services of a motor carrier, motor private carrier, freight forwarder, or broker, 49 U.S.C. 14501(c)(1), without actually "regulating [those] entities," Pet. 14. The Seventh Circuit committed no analytical error on this score, and it correctly concluded that the connection between negligent-hiring claims against freight brokers and motor-vehicle safety is too attenuated to fall within the scope of the safety exception.

b. Although the Seventh Circuit did not reach the issue, see Pet. App. 11a, its decision is also correct for another reason: a common-law tort claim for negligent hiring does not constitute an exercise of the "safety regulatory authority of a State." 49 U.S.C. 14501(c)(2)(A). The most natural reading of the safety exception is that it excludes common-law tort claims brought by private parties seeking compensation for past wrongs. The phrase "regulatory authority" is almost always synonymous with "regulatory agency" or, derivatively, the powers of such an agency. See, *e.g.*, 15 U.S.C. 7201(1); 16 U.S.C. 824i(a), (b); 42 U.S.C. 16431(a)(1); 49 U.S.C. 14702(a). It is also perfectly natural to refer to Congress's power to enact legislation as "regulatory authority." See, *e.g.*, *Kaiser Aetna* v. *United States*, 444 U.S. 164, 171-172 (1979). But

it would be verging on the eccentric to refer to the "regulatory authority of the courts." In addition, in *City of Columbus* v. *Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424 (2002), the Court explained that the phrase "safety regulatory authority" preserves the "traditional state police power over safety," *id.* at 439—the core of which is the power to "*enact legislation* for the public good." *Bond* v. *United States*, 572 U.S. 844, 854 (2014) (emphasis added); see *Torres* v. *Lynch*, 136 S. Ct. 1619, 1625 (2016).

Whatever the outer limits of the phrase "safety regulatory authority of a State," it cannot extend to common-law tort claims enforced by private parties seeking recompense for past harms. The common law of torts imposes general duties of care, not specific regulatory duties characteristic of statutes and regulations. And it is enforced not by state or local officials, but rather by private parties and their lawyers; the resulting lawsuits cannot be understood to be an exercise of the "authority of a State." And the primary goal of tort law, even if not the only one, is to "compensate" a victim for "injuries caused," *United States* v. *Burke*, 504 U.S. 229, 235 (1992) (citation omitted)—not to ensure "safety" prospectively. Reading the phrase "safety regulatory authority of a State" to reach a common-law negligence claim would give that phrase an expansive meaning with no basis in the FAAAA's text.

As the Seventh Circuit noted, Pet. App. 11a, the Ninth Circuit reached a contrary conclusion in *Miller*. But in so doing, that court made numerous analytical errors. For example, instead of asking what meaning the phrase "safety regulatory authority" conveys, the Ninth Circuit asked whether common-law claims fall within a State's broad "power over safety." *Miller*, 976 F.3d at 1026. To reframe the question that way is to answer it: of course a common-law negligence claim has *something* to do with a State's interest in safety.

The Ninth Circuit also interpreted the safety exception "broadly," in part based on a presumption against preemption. See *Miller*, 976 F.3d at 1026, 1028. The usual rule, of course, is that an "exception" to a "general statement of policy" should be read "narrowly." *Maracich* v. *Spears*, 570 U.S. 48, 60 (2013) (citation omitted). And in *Puerto Rico* v. *Franklin California Tax-Free Trust*, 579 U.S. 115 (2016), this Court declined to invoke any presumption against preemption where the relevant statute "contain[ed] an express pre-emption clause." *Id.* at 125 (citation omitted). Under the appropriate analysis, the "safety regulatory authority of a State" does not encompass common-law negligent-hiring claims against freight brokers.

3. Respondent agrees with petitioner that the question presented is one of significant importance. Because jury awards in personal-injury cases sometimes exceed insurance limits for motor carriers or drivers, plaintiffs have begun to target freight brokers and others in an effort to secure large damage awards in such cases. See Robert D. Moseley & C. Fredric Marcinak, *Federal Preemption in Motor Carrier Selection Cases Against Brokers and Shippers*, 39 Transp. L.J. 77, 77-78 (2012). If plaintiffs are permitted to bring such suits, the patchwork of state negligence doctrines invoked will "create uncertainty and even conflict," as "different juries in different States reach different decisions on similar facts." *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 871 (2000). The current uncertainty profoundly affects the core business functions of freight brokers, which serve a central role in the efficient operation of supply chains throughout the United States.

Despite the importance of the question presented, however, there are reasons why the Court may wish to allow the question to percolate further in the lower courts.

For one thing, the Seventh Circuit correctly held that petitioner's claim is preempted by the FAAAA, so there is no need to correct the outcome in this case. See pp. 10-15, *supra*. For another, although there is now a conflict among the courts of appeals, the conflict is shallow. Only two courts of appeals—the Ninth Circuit in *Miller* and the Seventh Circuit in the decision below—have squarely addressed the question presented. See pp. 7-10, *supra*. Further percolation may therefore be helpful to the Court.

What is more, the conflict may resolve on its own without the Court's intervention. In particular, in light of the Seventh Circuit's well-reasoned decision in this case, the Ninth Circuit may choose to reconsider its holding in *Miller*. That is particularly true because, while the Ninth Circuit relied in part on the presumption against preemption in *Miller*, it has declined to apply the presumption against preemption in other cases involving express-preemption provisions (relying on this Court's decision in *Franklin*, *supra*). See, *e.g.*, *R.J. Reynolds Tobacco Co.* v. *County of Los Angeles*, 29 F.4th 542, 553 n.6 (2022); see generally *California Restaurant Association* v. *City of Berkeley*, 65 F.4th 1045, 1060-1061 (2023) (O'Scannlain, J., concurring) (collecting cases). And given the proliferation of cases against freight brokers, other courts of appeals will surely have the opportunity to address the question presented in the near future.

In sum, while there is currently a shallow circuit conflict on the question presented, and while that question is a concededly important one, the Court may wish to allow further percolation on the question before granting plenary review, especially in the wake of the Seventh Circuit's well-reasoned decision. And because the Seventh Circuit correctly held that petitioner's negligent-hiring claim was preempted, further review here is unnecessary.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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