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

Reply Brief for Petitioner

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INTRODUCTION

Respondent GlobalTranz Enterprises agrees that there is "a conflict among the courts of appeals" on the question presented. Br. in Opp. 16. GlobalTranz also agrees "that the question presented is one of significant importance." *Id*. at 15. And two years ago, GlobalTranz stated that the issue was "ripe for decision by the Supreme Court" and urged this Court to address it. Brief Amici Curiae of Leading Industry Freight Brokers at 5, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. May 19, 2021).

The Court should grant the petition for certiorari, resolve the conflict on the issue of importance, and reverse the decision below.

ARGUMENT

1. As GlobalTranz concedes, Br. in Opp. 16, there is a circuit conflict on the question presented. In *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 2866 (2022), the Ninth Circuit held that a personal injury claim against a freight broker based on its negligent hiring of an unsafe motor carrier fell within the safety exception to preemption in the Federal Aviation Administration Authorization Act (FAAAA), which applies to the "safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). In contrast, considering "near-identical facts" to those in *Miller*, Pet. App. 20a, the Seventh Circuit held in this case that such a claim does *not* fall within the FAAAA's safety exception, because it "is not a law that is 'with respect to motor vehicles,'" *id*. at 11a.

Despite the acknowledged conflict, GlobalTranz halfheartedly suggests that this Court "may wish to allow additional percolation of the question presented." Br. in Opp. 7. There is no need for further percolation: The arguments on both sides of the question presented have now been aired in detailed court of appeals decisions. All that is left is for this Court to decide which side is right.

GlobalTranz muses that the "Ninth Circuit may choose to reconsider its holding in *Miller*." *Id.* at 16. Of course, every conflict among the circuits could theoretically be resolved if the courts reconsidered their opinions. But that theoretical possibility is unlikely here, where the Ninth Circuit denied C.H. Robinson's petition for rehearing en banc in *Miller* without a single judge requesting a vote. *See* Pet. App. 40a, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. Apr. 8, 2021). And the Seventh Circuit's decision, which is rife with analytical errors, *see* Pet. 11–17, is unlikely to change the Ninth Circuit's mind. Moreover, although GlobalTranz contends that the Ninth Circuit may want to reconsider *Miller* because that opinion cited the presumption against preemption, but other Ninth Circuit cases have declined to apply that presumption in express preemption cases, Br. in Opp. 16, *Miller*'s conclusion that negligent-hiring claims against freight brokers arising out of motor vehicle accidents are "with respect to motor vehicles" did not rest on that presumption. *See* 976 F.3d at 1030–31. That is, the presumption against preemption was not the basis for the Ninth Circuit's decision on the issue over which the Ninth and Seventh Circuits disagree.

Two years ago, GlobalTranz urged this Court to grant review in *Miller*, contending that the issue presented by the case was "ripe for decision by the Supreme Court." Brief Amici Curiae of Leading Industry Freight Brokers at 5, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. May 19, 2021). Although certiorari was not warranted then, when only one circuit court had addressed the issue, there is now a division among the courts of appeals. This Court should grant review to resolve that circuit conflict.

2. Granting review now is particularly important because the decision below places people who drive or ride on roads with trucks at increased risk of physical injury and death. The Seventh Circuit's decision immunizes brokers from liability when their negligence in hiring motor carriers leads to a catastrophic crash. Thus, for as long as the Seventh Circuit's decision is allowed to stand, brokers will have reduced incentives to take reasonable steps to ensure that they are not hiring motor carriers that will place dangerous motor vehicles on the road. As amicus the Institute for Safer Trucking has explained, the fact that brokers earn profits through "the difference between the fees they charge shippers for arranging transportation and the prices they pay motor carriers to haul the goods" 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." Br. of Institute for Safer Trucking as Amicus Curiae in Supp. of Pet'r at 14–15; *see id.* at 17–23 (providing examples). Immediate review and reversal of the Seventh Circuit's decision are necessary to ensure that brokers have sufficient

incentives to take reasonable care not to hire motor carriers that will take shortcuts with safety.

3. GlobalTranz devotes a significant portion of its brief in opposition to addressing the merits of the question presented. If the petition is granted, both parties can address the merits in detail. At this stage, GlobalTranz's disagreements with petitioner on the merits serve primarily to underscore that further percolation is not needed for the arguments on each side of the question presented to be developed.

Moreover, the merits of this case weigh strongly in favor of granting the petition to reverse the Seventh Circuit's erroneous decision below. The safety exception exempts from preemption under the FAAAA, 49 U.S.C. § 14501(c)(1), the "safety regulatory authority of a State with respect to motor vehicles," *id.* § 14501(c)(2)(A). As GlobalTranz recognizes, Br. in Opp. 10, this Court has interpreted the term "with respect to" in the FAAAA to mean "concern[s]," *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013). Here, the state-law requirement underlying petitioner Ying Ye's negligent-hiring claim obviously concerns motor vehicles: The purpose of imposing a requirement on brokers to take ordinary care not to hire motor carriers that will put dangerous motor vehicles on the road is to protect people from the dangers caused by motor vehicles.

Disagreeing with *Miller* and the large majority of district court decisions to address the issue, *see* Pet. 12 & n.3, the Seventh Circuit held that Ms. Ye's negligent-hiring claim against GlobalTranz does not fall within the safety exception because it is not "with respect to motor vehicles." Pet. App. 11a. In attempting to defend this holding, GlobalTranz

largely repeats the Seventh Circuit's error of focusing on the relationship between brokers and motor vehicles, rather than on the relationship between the state safety regulatory authority and motor vehicles, as the statutory text requires. *See* 49 U.S.C. § 14501(c)(2)(A).

Global Tranz argues that because the term "motor vehicle" means a "vehicle, machine, tractor, trailer, or semitrailer … used on a highway in transportation," 49 U.S.C. § 13102(16), the safety exception does not apply to claims against brokers, who do not themselves "use" motor vehicles. Br. in Opp. 11. But the safety exception does not require that the regulated party itself use a motor vehicle. As the United States explained in its invitation brief in *Miller*, the "text of the exception more broadly extends to state safety regulatory authority 'with respect to motor vehicles.' State common-law standards governing a broker's selection of motor carriers to safely operate motor vehicles 'concern' motor vehicles," and thus fall within the safety exception. Brief for the United States as Amicus Curiae at 17–18, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S. May 24, 2022).

GlobalTranz also repeats the Seventh Circuit's contention that the absence of a specific reference to brokers in the safety exception suggests that the safety exception does not encompass claims against brokers. Br. in Opp. 11–12. But the safety exception likewise does not mention motor carriers, or drivers, or motor vehicle owners, or any other regulated entity. As Ms. Ye explained in the petition, the exception is not focused on the nature of the defendant but on the nature of the state regulatory authority at issue,

which, here, concerns motor vehicles. Thus, although GlobalTranz criticizes Ms. Ye for pointing out that the safety exception does not mention any of the entities whose "price[s], route[s], or service[s]" are referred to in 49 U.S.C. § 14501(c)(1), arguing that section 14501(c)(1) is not limited to laws regulating those entities, Br. in Opp. 13, GlobalTranz cannot dispute that, if the nature of the party to whom the law applied had to be included in the exception, *no* law would fall within the safety exception.

GlobalTranz's argument that the Seventh Circuit's interpretation of the safety exception is necessary to avoid superfluity lacks merit. The safety exception does not apply to all laws that are "with respect to motor vehicles"; the laws must also be "genuinely responsive to safety concerns." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 442 (2002). GlobalTranz is thus wrong that, because they bear a connection to motor vehicles, laws addressed in other exceptions—such as state laws based on the size or weight of the vehicle—would necessarily "already be covered by the safety exception under petitioner's interpretation." Br. in Opp. 12.

GlobalTranz contends that common-law tort claims do not fall within the state's safety regulatory authority. GlobalTranz conceded in the district court, however, that the safety exception can apply to such claims. *See* Def. GlobalTranz Enters., Inc.'s Reply to Pl.'s Resp. to Def.'s Mot. to Dismiss, Docket Entry 67, at 13, *Ying Ye v. Global Sunrise, Inc.*, Case No. 18-cv-01961 (filed Jan. 10, 2020) (stating that "[c]laims for negligent operation, maintenance, or use of a motor vehicle against a motor carrier or operator" fall within the safety exception). And GlobalTranz did not argue

below that common-law duties are not part of the state's safety regulatory authority.

Moreover, the federal courts of appeals that have considered the issue have agreed that the "safety regulatory authority of a State" includes common law. *See Aspen Am. Ins. Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1268 (11th Cir. 2023); *Miller*, 976 F.3d at 1026–29.

In contrast, the courts of appeals have disagreed on the question that was decided by the Seventh Circuit: whether personal injury claims against freight brokers based on the negligent hiring of an unsafe motor carrier invoke the state's safety regulatory authority "with respect to motor vehicles." This Court should grant the petition, resolve that conflict, and reverse the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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