No. 24-1238

Supreme Court of the United States

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC,
YOSNIEL VARELA-MOJENA,
C.H. ROBINSON WORLDWIDE, INC.,
C.H. ROBINSON COMPANY,
C.H. ROBINSON COMPANY, INC.,
C.H. ROBINSON INTERNATIONAL, INC.,
and CARIBE TRANSPORT, LLC,

Respondents.

On petition for a writ of certiorari to the
United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

ALAN G. PIRTLE
Brown & Crouppen, P.C.

MICHAEL J. LEIZERMAN
RENA M. LEIZERMAN
The Law Firm for Truck Safety LLP

BRYAN S. GOWDY
Counsel of Record
DIMITRIOS A. PETEVES
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075
bgowdy@appellate-firm.com

Counsel for Petitioner

July 2025

TABLE OF CONTENTS

Page

Table of contents i

Table of authorities ii

Argument 1

I. The circuit split has deepened. 1

II. A federal-state conflict has emerged. 3

III. This Court should not narrow the question presented. 4

IV. C.H. Robinson is wrong on the merits. 6

TABLE OF AUTHORITIES

Page

CASES

Bedoya v. Am. Eagle Express Inc.,
914 F.3d 812 (3d Cir. 2019)..... 11, 12

Bowles v. White Oak, Inc.,
1988 WL 97901 (Del. Super. Ct. Sept. 15, 1988)..... 12

BP P.L.C. v. Mayor of Baltimore,
141 S. Ct. 1532 (2021) 7

Cassano v. Aschoff,
543 A.2d 973 (N.J. Super. Ct. App. Div. 1988) 12

Cox v. Total Quality Logistics, Inc.,
No. 24-3599, 2025 WL 1878770
(6th Cir. July 8, 2025) 1-2, 3, 4, 13

Dan's City Used Cars, Inc. v. Pelkey,
569 U.S. 251 (2013) 2

DIRECTV, *Inc. v. Imburgia*,
577 U.S. 47 (2015) 5

Ellis & Lewis v. Warner,
20 S.W.2d 320 (Ark. 1929) 8

Encino Motorcars, LLC v. Navarro,
584 U.S. 79 (2018) 7

Exxon Mobil Corp. v. Allapattah Servs., Inc.,
545 U.S. 546 (2005) 11

Farlow v. Gagner,
481 N.W.2d 708 (Wis. Ct. App. 1992) 12

German v. Mountain States Tel. & Tel. Co.,
462 P.2d 108 (Ariz. Ct. App. 1969) 12

Glossop v. Gross,
576 U.S. 863 (2015) 10

H.P. Welch Co v. New Hampshire,
306 U.S. 79 (1939) 8-9

Hudgens v. Cook Indus., Inc.,
521 P.2d 813 (Okla. 1973) 8

Johnson v. Pac. Intermountain Express Co.,
662 S.W.2d 237 (Mo. 1983) 8

Kaipust v. Echo Global Logistics, Inc.,
No. 1-24-0530, 2025 WL 1721661
(Ill. App. Ct. June 20, 2025) 4

Klaxon Co v. Stentor Electric Mfg. Co.,
313 U.S. 487 (1941) 10

L.B. Foster Co v. Hurnblad,
418 F.2d 727 (9th Cir. 1969) 8

Levy v. Currier,
587 A.2d 205 (D.C. 1991) 12

McCall v. Ala. Bruno's, Inc.,
647 So. 2d 175 (Fla. Dist. Ct. App. 1994) 12

Pardo v. State,
596 So. 2d 665 (Fla. 1992) 4-5

People v. Carpenter,
888 N.E.2d 105, 111 (Ill. 2008) 4

Richards v. Consol. Lighting Co.,
99 A. 241 (Vt. 1916)..... 12

Risley v. Lenwell,
277 P.2d 897 (Cal. Ct. App. 1954)..... 8

Rowley v. Mayor of Baltimore,
505 A.2d 494 (Md. 1986) 12

Sievers v. McClure,
746 P.2d 885 (Alaska 1987) 12

Simon v. Anheuser-Busch Cos.,
No. 2D2023-2775 (Fla. Dist. Ct. App.) 4

STATUTES

49 U.S.C. § 13102(3) 13

49 U.S.C. § 13102(8) 13

49 U.S.C. § 13102(23) 13

49 U.S.C. § 13102(26) 13

49 U.S.C. § 14501(b) 11

49 U.S.C. § 14501(c)..... 1, 4, 5, 6, 10, 11

49 U.S.C. § 14501(c)(1) 1, 2, 5, 13

49 U.S.C. § 14501(c)(2)(A) 1, 9, 11

ACT

Motor Carrier Act of 1980,
Pub. L. No. 96-296, 94 Stat. 793 8

CONSTITUTIONAL PROVISION

U.S. Const. amend. X 8

OTHER AUTHORITIES

Antonin Scalia & Bryan A. Garner,
Reading Law: The Interpretation of Legal Texts (2012) 7

H.R. Rep. No. 103–677 (1994) (Conf. Rep.) 11-12

Interstate Commerce – Power of States: Interstate Carriers – Grant of Discretionary Authority to ICC Held Not to Supersede State Police Regulation,
52 Harv. L. Rev. 841 (1939) 8

Petition for a Writ of Certiorari, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425, 2021 WL 1391269 6

Petition for a Writ of Certiorari, *Gauthier v. Total Quality Logistics, LLC*, No. 24-592, 2024 WL 4981153 6

Petition for a Writ of Certiorari, *Ye v. Globaltranz Enters.*, No. 23-475, 2023 WL 7343060 6

Restatement (First) of Torts § 411 (1934) 7

ARGUMENT

I. The circuit split has deepened.

The petition identified a circuit split on an important matter. Pet.12–15. That split has deepened. The Sixth Circuit has aligned with the Ninth Circuit against the Seventh and Eleventh Circuits. *Cox v. Total Quality Logistics, Inc.*, No. 24-3599, 2025 WL 1878770 (6th Cir. July 8, 2025).

In *Cox*, the plaintiff sued a broker for negligent selection under Ohio common law. *Id.* at *1, 4. He alleged that the broker negligently selected an unsafe motor carrier, resulting in a crash that killed his wife. *Id.* at *1. The district court dismissed the negligent-selection claim, ruling that it was preempted by 49 U.S.C. § 14501(c).

The Sixth Circuit determined that the negligent-selection claim was "related to" broker services because it sought to hold the broker liable for its selection of a motor carrier, which "affect[s] how brokers conduct their services and the amount of money that they spend on those services." *Id.* at *4. The court thus concluded that the claim fell under the preemption provision in § 14501(c)(1). *Id.* at *5.

The Sixth Circuit then turned to the safety exception in § 14501(c)(2)(A). For multiple reasons, the court concluded that the negligent-selection claim was part of the "safety regulatory authority of a State." *Id.* at *5–6. The court also concluded that the negligent-selection claim was "with respect to motor vehicles." *Id.* at *6–9. In doing so, the Sixth Circuit applied this Court's decision in *Dan's City* to determine that the term "with respect to" means "concerns" and that "when courts evaluate whether a common law

negligence claim concerns motor vehicles, they must look to the substance of the underlying allegations and assess whether the alleged negligent conduct 'involves' motor vehicles." *Id.* (quoting *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261–62 (2013)) (alterations adopted). The Sixth Circuit explained that "[t]he crux of the alleged negligent conduct" was that the broker "failed to exercise reasonable care in selecting a safe motor carrier to operate a motor vehicle on the highway, resulting in a vehicular accident that killed [the plaintiff's wife]—allegations that plainly 'involve' motor vehicles and motor vehicle safety." *Id.* In short, there was "no way to disentangle motor vehicles from [the plaintiff's] substantive claim." *Id.*

The broker argued—consistent with the Seventh and Eleventh Circuits' decisions—that the safety exception did not apply because it does not reference brokers. *Id.* at *7. The Sixth Circuit rejected that interpretation as "based on a faulty reading of the safety exception." *Id.* As the court explained, "[t]he exception contains no mention of *any* regulated persons or entities, including the three other entities listed in the preemption provision." *Id.* Instead, "it provides a carveout from § 14501(c)(1) *for certain state laws* based on the substance of those laws." *Id.* (emphasis added).

The broker also argued—consistent with the Seventh and Eleventh Circuits' decisions—that the safety exception "requires a *direct* connection between the state law and motor vehicles." *Id.* at *8. The Sixth Circuit said there was "good reason to doubt that the safety exception requires a *direct* connection," such as the absence of the word "direct" from the statute's text. *Id.* Nevertheless, the court did not decide that issue, reasoning that even if a direct connection were

required, the plaintiff's claim satisfied the requirement. *Id.*

The Seventh and Eleventh Circuits had concluded that "for a direct connection to exist, the regulated entity must be one which directly owns or operates motor vehicles." *Id.* But the Sixth Circuit said "[t]hat formulation misses the mark." *Id.* Again, "[t]he exception requires that the *state law* at issue substantively concern motor vehicles. It focuses on the connection between the *state law* and motor vehicles, and not necessarily on the connection between the regulated entity and motor vehicles." *Id.* (emphasis added). "Requiring that the regulated entity directly own or operate motor vehicles would impose an additional limitation beyond what the text of the exception requires." *Id.*

In sum, the Sixth Circuit held that the negligent-selection claim fell under the safety exception and was not preempted. *Id.* at *9. This holding aligns the Sixth Circuit with the Ninth Circuit and against the Seventh and Eleventh Circuits. This Court should grant certiorari to resolve the circuit split.

II. A federal-state conflict has emerged.

Illinois's First District Appellate Court has since ruled contrary to the Seventh Circuit and held that a negligent-selection claim against a broker is not preempted. *Kaipust v. Echo Global Logistics, Inc.*, No. 1-24-0530, 2025 WL 1721661 (Ill. App. Ct. June 20, 2025).[1] The Illinois court reasoned that "negligent

[1] The decision was initially unpublished. On July 21, 2025, the court denied rehearing and granted a motion to publish its decision, which will make the decision binding on every trial court in Illinois. *See People v. Carpenter*, 888 N.E.2d 105, 111 (Ill. 2008).

selection claims are sufficiently responsive to safety concerns to satisfy any directness standard." *Id.* at *6. The court also noted that it would be "an absurd result to interpret the intent of Congress to allow brokers to act as negligently as they want with impunity." *Id.* at *5.

This conflict presents a problem: a broker sued for negligent selection in Illinois is immune from liability if sued in federal court but not if sued in state court. Absent this Court's intervention, litigants in Illinois will have conflicting legal rights depending only on whether the suit proceeds in state or federal court.

The same conflict may arise in Florida. Again, the Eleventh Circuit has held that § 14501(c) preempts negligent-selection claims. But a Florida appellate court is expected to soon decide the issue and could rule contrary to the Eleventh Circuit. *See Simon v. Anheuser-Busch Cos.*, No. 2D2023-2775 (Fla. Dist. Ct. App.) (oral argument held April 22, 2025). The Florida appellate court's decision will bind every trial court in the third most populous state. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992).

This Court frequently grants certiorari where a circuit court and a state appellate court within the same circuit disagree on whether a state law is preempted. *E.g.*, DIRECTV, *Inc. v. Imburgia*, 577 U.S. 47, 53 (2015). This Court should do the same here.

III. This Court should not narrow the question presented.

The question presented in the petition is: "Does § 14501(c) preempt a state common-law claim against a broker for negligently selecting a motor carrier or driver?" Pet.i. That is, the question asks this Court to consider the preemption issue as a whole by

addressing both the preemption provision in (c)(1) and the safety exception in (c)(2)(A).

The brief in opposition seeks to narrow the question presented and focus this Court's attention only on the safety exception in (c)(2)(A). BIO.i–ii. This Court should reject C.H. Robinson's narrowing of the question. As the Sixth Circuit explained, "the initial applicability of § 14501(c)(1) is a threshold issue." *Cox*, 2025 WL 1878770, at *4.

If this Court were to limit its review to only the safety exception in (c)(2)(A), then its decision would not conclusively resolve the difference of opinion among the lower courts, as "district courts across the country are split on whether (c)(1) preempts such claims." Pet.15 & n.12. In other words, if this Court were to accept both C.H. Robinson's narrower question and its merits position on (c)(2)(A)—which it should not—litigants in the lower courts could still argue, based on (c)(1), that the federal statute does not preempt a state common-law claim against a broker for negligently selecting a motor carrier or driver.

The Court should accept the comprehensive nature of the question presented, which distinguishes this petition from the three prior petitions denied by this Court. Those petitions asked this Court to address only the safety exception.[2]

---

[2] *See* Petition for a Writ of Certiorari at I, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425, 2021 WL 1391269, at *I; Petition for a Writ of Certiorari at i, *Ye v. Globaltranz Enters.*, No. 23-475, 2023 WL 7343060, at *i; Petition for a Writ of Certiorari at i, *Gauthier v. Total Quality Logistics, LLC*, No. 24-592, 2024 WL 4981153, at *i.

IV. C.H. Robinson is wrong on the merits.

The petition discussed seven reasons why the Seventh and Eleventh Circuits were wrong to hold that § 14501(c) preempts negligent-selection claims. Pet.17–21. The brief in opposition does not address any of those reasons. It instead makes other arguments, which Petitioner responds to below.

First, C.H. Robinson makes purposivist arguments throughout its brief. *E.g.*, BIO.25 n.13 (relying on "[c]ongressional intent and purpose"). To be sure, Congress had "deregulatory goals" in enacting the FAAAA and its predecessors. BIO.21. But it is a "flawed premise" to suggest that a law pursues its purposes at all costs. *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 89 (2018). "[T]he limitations of a text . . . are as much a part of its 'purpose' as its affirmative dispositions." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 2 at 57 (2012). So too here. The safety exception in (c)(2)(A) was no less one of Congress's purposes than the preemption provision in (c)(1). *Cf. BP P.L.C. v. Mayor of Baltimore*, 141 S. Ct. 1532, 1539 (2021).

Second, C.H. Robinson argues that "[n]egligent hiring claims against brokers cannot be saved because the FAAAA's savings clause cannot preserve what did not exist." BIO.19. But negligent hiring (a.k.a. negligent selection) is a longstanding cause of action under the common law. *See* Restatement (First) of Torts § 411 (1934) (illustrations 2, 4). Claims for negligent hiring of a motor carrier existed well before the FAAAA was enacted.[3]

---

[3] *E.g.*, *Hudgens v. Cook Indus., Inc.*, 521 P.2d 813 (Okla. 1973); *L.B. Foster Co v. Hurnblad*, 418 F.2d 727 (9th Cir. 1969); (*Footnote continued*)

Not only is the premise of C.H. Robinson's argument factually wrong, but it is also legally wrong. C.H. Robinson assumes that "States did not have the authority to establish fitness standards for motor carriers"—and, in turn, that claims for negligent hiring of motor carriers could not be maintained—because the Motor Carrier Act of 1935 purportedly "preempted the field." *See* BIO.19–20. Yet, even the Interstate Commerce Commission "impliedly interpreted the Motor Carrier Act to permit state regulation of safety of operation." *Interstate Commerce – Power of States: Interstate Carriers – Grant of Discretionary Authority to ICC Held Not to Supersede State Police Regulation*, 52 Harv. L. Rev. 841, 842 (1939).

Even if the Motor Carrier Act of 1935 preempted the field, any such preemption necessarily evaporated when Congress deregulated the trucking industry with the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793. At that time, authority reverted to the States, which retain all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States." U.S. Const. amend. X; *see also H.P. Welch Co v. New Hampshire*, 306 U.S. 79, 83 (1939) (recognizing that States had the authority to regulate safety of motor carriers before the Motor Carrier Act of 1935).

Third, C.H. Robinson frames the issue as "whether federal law permits the States to establish through their tort systems[] fitness standards for federally-licensed motor carriers hired by brokers in interstate commerce." BIO.1; *see also* BIO.22. But a

---

Risley v. Lenwell, 277 P.2d 897, 904–11 (Cal. Ct. App. 1954); *Ellis & Lewis v. Warner*, 20 S.W.2d 320 (Ark. 1929); *see also Johnson v. Pac. Intermountain Express Co.*, 662 S.W.2d 237, 241–42 (Mo. 1983).

claim for negligent selection of a motor carrier does not necessarily establish fitness standards. Under C.H. Robinson's interpretation of § 14501(c), even if a broker hired a motor carrier that did not meet the existing federal fitness standards, a negligent-selection claim against the broker would be preempted.

Further, even if a negligent-selection claim amounted to establishing fitness standards, C.H. Robinson fails to explain why doing so would not be part of the "safety regulatory authority of a State with respect to motor vehicles." § 14501(c)(2)(A). To hold otherwise would mean that even a negligence claim against a motor carrier would be preempted. After all, such a claim could also be said to establish fitness standards. Yet, to Petitioner's knowledge, no court has held that § 14501(c) preempts negligence claims against motor carriers. Such a holding would mean that an injured person could sue if injured by a car but not if injured by a truck.

C.H. Robinson complains that "different juries in different States will reach different decisions on similar facts, introducing uncertainty and even conflict." BIO.12 (cleaned up). But that is the nature of federalism and jury trials. *E.g.*, *Klaxon Co v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 496 (1941); *Glossop v. Gross*, 576 U.S. 863, 896 (2015) (Scalia, J., concurring).

C.H. Robinson also notes that "Congress specifically assigned the Secretary of Transportation the responsibility to determine whether motor carrier operators and owners are fit to operate commercial motor vehicles safely in interstate commerce." BIO.22. The question, however, is whether Congress granted the Secretary *exclusive* authority to regulate the safety and fitness of motor carriers or instead allowed States to have a role. In other words, did Congress preempt

the States' parallel authority to regulate safety and fitness of motor carriers? The safety exception answers this question: no, Congress did not.

Fourth, C.H. Robinson emphasizes that § 14501(b)—which preempts state laws relating to *intra*state rates, routes, or services of brokers—does not have a safety exception. BIO.27. C.H. Robinson says it is "absurd" to "accept that Congress preserved state authority to regulate a broker's selection of a motor carrier for interstate transportation but not for intrastrate rates, routes, or services." BIO.27–28.

At bottom, what C.H. Robinson complains about is the statute itself—not about its interpretation. No matter how broadly or narrowly the safety exception in § 14501(c)(2)(A) is construed, Congress plainly included a safety exception for *inter*state services of brokers in § 14501(c) and not for *intra*state services of brokers in § 14501(b). In other words, regardless of how the safety exception is construed, some state laws relating to *inter*state services of brokers will not be preempted while those relating to *intra*state services of brokers will. To the extent that is "odd," it does not give courts the authority to depart from the statutory text. *E.g.*, *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 565 (2005).

"[I]nsight into the limits of FAAAA preemption comes from the subjects Congress considered when enacting that statute." *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812, 819 (3d Cir. 2019). Congress identified ten jurisdictions (Alaska, Arizona, Delaware, the District of Columbia, Florida, Maine, Maryland, New Jersey, Vermont and Wisconsin) that did not regulate intrastate prices, routes, and services. *Id.*; H.R. Rep. No. 103–677, at 86 (1994) (Conf. Rep.). In 1994, nine of those jurisdictions recognized some

form of the tort of negligent selection of an independent contractor.[4] This indicates that negligent selection is not a preempted law "related to a price, route, or service of any . . . broker . . . with respect to the transportation of property." *Bedoya*, 914 F.3d at 819.

Fifth, C.H. Robinson argues that "the phrase 'with respect to motor vehicles' must impose a 'meaningful limit' on the scope of the safety exception." BIO.13. C.H. Robinson ignores the petition, which explains that this language "serves a purpose by saving only those safety laws with respect to motor vehicles—as opposed to other modes of transportation." Pet.19.

C.H. Robinson claims that "[e]very state law within the scope of the preemption provision arguably has at least some indirect relationship to motor vehicles." BIO.15. But that, too, is wrong. The preemption provision covers services of a "freight forwarder," which do not necessarily involve motor vehicles. 49 U.S.C. § 14501(c)(1). By definition, a "freight forwarder" can use other modes of "transportation," such as by water carrier. *See id.* §§ 13102(3), (8), (23), (26).

Sixth, C.H. Robinson argues that "if the first portion of the savings clause preserved any state

---

[4] *Sievers v. McClure*, 746 P.2d 885, 891 (Alaska 1987); *German v. Mountain States Tel. & Tel. Co.*, 462 P.2d 108, 110 (Ariz. Ct. App. 1969); *Bowles v. White Oak, Inc.*, 1988 WL 97901, at *5 (Del. Super. Ct. Sept. 15, 1988); *Levy v. Currier*, 587 A.2d 205, 211 (D.C. 1991); *McCall v. Ala. Bruno's, Inc.*, 647 So. 2d 175, 177 (Fla. Dist. Ct. App. 1994); *Rowley v. Mayor of Baltimore*, 505 A.2d 494, 497 (Md. 1986); *Cassano v. Aschoff*, 543 A.2d 973, 975 (N.J. Super. Ct. App. Div. 1988); *Richards v. Consol. Lighting Co.*, 99 A. 241, 243 (Vt. 1916); *Farlow v. Gagner*, 481 N.W.2d 708 (Wis. Ct. App. 1992).

safety law indirectly connected to motor vehicles, Congress's separate allowance in that same subsection for state authority over state highway route controls and cargo limits 'would almost certainly be redundant because such controls and limits are indirectly related to motor vehicle safety, too.'" BIO.16. C.H. Robinson ignores that the petition addressed that argument. Pet.19–20. What's more, as the Sixth Circuit explained, a redundancy would exist even under C.H. Robinson's interpretation. *Cox*, 2025 WL 1878770, at *8 n.8. And, in any event, "[i]t is logical that Congress would provide a broad carveout for states to regulate motor vehicle safety, while expressly enumerating other areas of state regulatory authority that are motivated not only by motor vehicle safety, but also other concerns, such as traffic efficiency and public health." *Id.*

Finally, C.H. Robinson suggests that Petitioner's reading of the statute creates the danger of "an almost unending series of connections" for negligent-selection liability. BIO.17. As the petition explains, however, a negligent-selection claim is limited by the requirement of proximate cause. Pet.21. Absent a direct connection between the defendant's negligence and the underlying injury, a claim for negligent selection cannot proceed. Pet.21.

Respectfully submitted,

BRYAN S. GOWDY
Counsel of Record
DIMITRIOS A. PETEVES
Creed & Gowdy, P.A.

Counsel for Petitioner

July 2025