

**In the
Supreme Court of the United States**

SHAWN MONTGOMERY,

Petitioner,

v.

CARIBE TRANSPORT II, LLC, ET AL.,

Respondents.

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

**BRIEF OF AMICUS CURIAE
AMERICAN TRUCKERS UNITED
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

AMERICAN TRUCKERS UNITED (ATU) is an advocacy group dedicated to the safety and success of America's truck drivers and the motor carriers that employ them. Many of ATU's carriers are small, family-owned businesses that have transported freight—safely, responsibly, and profitably—over the nation's highways for generations.

ATU has a strong interest in ensuring that the Federal Aviation Administration Authorization Act (FAAAA) is interpreted correctly. As Petitioner explains, the plain text of the FAAAA preserves state law tort claims against brokers that negligently place dangerous motor carriers on the road, leading to fatal or injurious crashes. A contrary interpretation would have devastating consequences for the hundreds of thousands of responsible motor carriers and truckers forming the backbone of the commercial trucking industry. If brokers are immunized from tort liability, they will have an unrestrained incentive to hire the cheapest motor carriers available for every load, regardless of poor safety records, regulatory non-compliance, defective equipment, and other red flags. Low-cost, low-quality carriers will completely displace safe carriers in the market. ATU's carriers will lose their contracts, the quality of commercial trucking in the U.S. will decline, and public safety will suffer.

¹ No counsel for a party authored this brief in whole or in part. No person or entity, other than amicus curiae, its members, or its counsel, made a monetary contribution to its preparation or submission.



INTRODUCTION AND SUMMARY OF ARGUMENT

Freight transportation is the foundation of our economy. America's 132.2 million households, 8.4 million business establishments, and 90,888 governmental units all demand the efficient movement of freight. *Freight Facts and Figures, The Nation Served by Freight*, U.S. Dep't of Transp., Bureau of Transp. Stat.² Freight transportation shapes "industries' abilities to access materials, ship products, and manage logistics operations," underpinning the supply chain "from procurement and production to delivery." *Transportation Statistics Annual Report 2024 (30th Anniversary)*, U.S. Dep't of Transp., Bureau of Transp. Stat., 3-1 (Dec. 2024).³ In 2023 alone, the American freight transportation system moved 20.1 billion tons of goods, valued at around \$18.7 trillion, over vast distances totaling 5.465 billion ton-miles. *Id.* at 3-3.

Commercial trucking is the dominant mode of freight transportation, accounting for 64.5% of the total freight moved and 72.5% of the total value. *Id.* There are three major players in commercial trucking: shippers; motor carriers, including their drivers; and brokers. Shippers provide freight to transport, while motor carriers and their drivers provide transportation. Brokers, then, work with shippers to find and hire motor carriers. Shippers benefit from working with

² <https://data.bts.gov/stories/s/The-Nation-Served-byFreight/d3er-58uw> (last visited Dec. 1, 2025).

³ <https://rosap.ntl.bts.gov/view/dot/79039>.

brokers because they can offload the labor of hiring motor carriers to transport loads within the shippers' schedules and budgets. *What is a Freight Broker and What Do They Do*, DAT Freight & Analytics (Nov. 27, 2023).⁴ Motor carriers benefit because they can more easily find loads to transport that align with their capacity, preferred routes, and rate requirements. *Id.*

Although brokers have existed since the 1920s, their role in the commercial trucking industry has become increasingly vital. See Jeffrey S. Kinsler, *Motor Freight Brokers: A Tale of Federal Regulatory Pandemonium*, 14 Nw. J. Int'l L. & Bus. 289, 298 (1993) (describing the early years of freight brokerage). Only 25 years ago, brokerage represented a small percentage of the total freight market—around 6%. *2024 Investor Day Presentation*, C.H. Robinson, 12 (Dec. 12, 2024).⁵ Today, it represents 29% percent of the market, and its prevalence continues to rise. *Id.*; see Craig Fuller, *Freight recession unlike any other in history; Proliferation of freight brokerages gives truckers a lifeline*, Freight Waves (Oct. 15, 2023)⁶; Br. for Nat'l Ass'n of Mfrs. as Amicus Curiae Supporting Resp'ts, 8 (July 7, 2025) (describing how “the need for freight brokers continues to climb”).

⁴ <https://www.dat.com/resources/what-is-a-freight-broker-and-what-do-they-do>.

⁵ https://investor.chrobinson.com/News-and-Events/Presentations/Presentation-details/2024/2024-Investor-Day-Presentation-excluding-CFOs-Presentation-2024-1_OdXlmFbY/default.aspx.

⁶ <https://www.freightwaves.com/news/freight-recession-unlike-any-other-in-history>.

In an enormously consequential industry, brokers increasingly act as gatekeepers, deciding which motor carriers and truckers end up on America’s highways. Brokers are making these decisions at a time when responsible motor carriers are already struggling with high costs and low rates. And because brokers are incentivized to hire cheap carriers, market forces are driving extreme competition and deprioritizing safety.

Tort liability provides a critical check on industry incentives. If a broker negligently hires a dangerous carrier, leading to a fatal or injurious motor vehicle crash, state law tort claims compensate victims, ensure accountability, and deter future misconduct. Without tort liability, America’s responsible motor carriers and truckers will suffer alongside the motoring public. The FAAAA does not envision—and it certainly does not require—this result.



ARGUMENT

I. America’s Small Motor Carriers are Struggling.

The vast majority of American motor carriers are small businesses. Over 90% operate ten or fewer trucks. *Economics and Industry Data*, Am. Trucking Ass’ns.⁷ Over 99% operate 100 or fewer trucks. *Id.* Like most small businesses, small motor carriers face significant challenges. Economic uncertainty—tied to inflation, rising interest rates, and tariffs—has rattled supply

⁷ <https://www.trucking.org/economics-and-industry-data> (last visited Dec. 1, 2025).

chains and disrupted freight patterns. Anders Petersson, *The top six challenges faced by the trucking industry—and how to tackle them*, Volvo Trucks (Apr. 21, 2024).⁸ Volatility in fuel prices impacts budgets. Mark Solomon, *Soaring fuel prices leave owner-operators with tough choices*, Freight Waves (May 16, 2022).⁹ A nationwide shortage of truck parking requires truckers to stop in unauthorized, unsafe locations. *National Truck Parking Shortage: A Growing Safety Concern for All Motorists*, Am. Trucking Ass’n (Nov. 8, 2023).¹⁰

Perhaps the greatest challenge facing small motor carriers today is the combination of rising operational costs and depressed freight rates. According to the American Transportation Research Institute (ATRI), the average cost of operating a truck in 2024 was \$2.26 per mile. *An Analysis of the Operational Costs of Trucking: 2025 Update*, Am. Transp. Rsch. Inst., 15 (July 2025).¹¹ Excluding fuel, this represents an operational cost increase of 3.6 percent since 2023—and the highest non-fuel operational cost ever recorded by ATRI. *Id.* at 6, 18; see also Thomas Wasson, *ATRI report: Rising costs continue to squeeze trucking industry*, Freight Waves (July 4, 2025) (reporting that “[t]he trucking industry is facing the most challenging freight

⁸ <https://www.volvotrucks.com/en-en/news-stories/insights/articles/2024/apr/top-six-challenges-in-the-trucking-industry.html>.

⁹ <https://www.freightwaves.com/news/soaring-fuel-prices-leave-owner-operators-with-tough-choices>.

¹⁰ <https://www.trucking.org/news-insights/national-truck-parking-shortage-growing-safety-concern-all-motorists>.

¹¹ <https://truckingresearch.org/2025/07/an-analysis-of-the-operational-costs-of-trucking-2025-update/>.

market in years, with loads down and costs increasing”).¹²

Increased safety expenditures are a major component of motor carriers’ rising costs. The American Trucking Associations (ATA) estimates that the trucking industry spent \$14 billion on safety in 2022—a major increase from \$9.8 billion in 2014. *Economics and Industry Data*, Am. Trucking Ass’ns, *supra*. Among these increased safety expenditures, motor carriers must proactively maintain their equipment. *See id.* (listing five main areas of safety spending, including safety-related maintenance); John A. Volpe Nat’l Transp. Sys. Ctr., *The Carrier Safety Measurement System (CSMS) Effectiveness Test by Behavior Analysis and Safety Improvement Categories (BASICS)*, U.S. Dep’t of Transp., Fed. Motor Carrier Safety Admin., 8 (Jan. 24, 2014) (showing that motor carriers targeted for interventions due to vehicle maintenance problems have a 65% increase in crash rate compared to the national average).¹³ Motor carriers also must invest in evolving safety technology, such as lane departure warning systems, automatic emergency braking, and collision avoidance technologies. David O’Neal, *The operational costs of trucking: A look at expenses, including safety*, Motive (Nov. 4, 2024).¹⁴ They must train their employees, from new hires to veteran drivers. Ray Haight, *Measuring the true cost of recruitment*, Truck News

¹² <https://www.freightwaves.com/news/atri-report-rising-costs-continue-to-squeeze-trucking-industry>.

¹³ <https://rosap.nhtl.bts.gov/view/dot/12037>.

¹⁴ <https://gomotive.com/blog/trucking-operational-costs/>.

(Mar. 11, 2021).¹⁵ They often provide safety incentives. See Walter T. Ryley & Michael H. Belzer, *Compensation and crash incidence: Evidence from the National Survey of Driver Wages*, 34 Econ. & Lab. Rels. Rev. 118, 132 (2023) (concluding that the presence of a safety bonus is associated with approximately 9% fewer crashes). And they must supervise their drivers closely, to ensure compliance with safety regulations related to hours of service, vehicle inspections, and drug and alcohol testing. 49 C.F.R. § 390.11.

Meanwhile, as motor carriers' costs are climbing, freight rates remain low. Motor carriers are often paid less than their operational cost per mile. See David Roush, *Shippers Still Hold the Cards: Carrier Survival Tactics*, KSM (Sept. 26, 2025) (noting that “many carriers are still under water”; the national average dry van spot rate is \$2.05 per mile, while the average dry van cost per mile is \$2.398)¹⁶; compare *Trucking Rates Per Mile 2025*, Dynamic Logistix (showing spot rates around \$2.00 per mile),¹⁷ with Alex Leslie, *New ATRI Report Shows Trucking Profitability Severely Squeezed by High Costs, Low Rates*, Am. Transp. Rsch. Inst. (July 1, 2025) (noting the average cost of operating a truck in 2024 was \$2.26 per mile).¹⁸

¹⁵ <https://www.trucknews.com/blogs/measuring-the-true-cost-of-recruitment/>.

¹⁶ <https://www.ksmcpa.com/insights/shippers-still-hold-the-cards-carrier-survival-tactics/>.

¹⁷ <https://dynamiclogistix.com/trucking-freight-rates/> (last visited Dec. 1, 2025).

¹⁸ <https://truckingresearch.org/2025/07/new-atri-report-shows-trucking-profitability-severely-squeezed-by-high-costs-low-rates/>.

In this economic environment, it is no surprise that small motor carriers are struggling, and bankruptcies are frequent. *See, e.g., Caleb Revill, California carrier closes doors, terminates over 100 employees, Freight Waves (Oct. 7, 2025)*¹⁹; *Family-owned trucking company files for Chapter 11 bankruptcy protection in Colorado court, CDLLife (Aug. 5, 2025)*²⁰; Caleb Revill, *California trucking company closes after 40 years in business, Freight Waves (Aug. 1, 2025)*²¹; Laharish Guntuka et al., *US Motor-Carrier Exit: Prevalence and Determinants*, 58 Transp. J. 79, 92 (2019) (finding that smaller motor carriers are more likely to exit the industry because they have fewer “financial slack resources and cost efficiencies”).

II. Brokers are Incentivized to Hire Cheap Motor Carriers.

The broker business model exacerbates these economic challenges for small motor carriers. Brokers earn their profit from the spread, or margin, between the amount a motor carrier charges and the amount a shipper pays. *See* Thomas M. Corsi, *Broker/third party logistics provider and shipper responsibility in motor carrier selection*, in *Transportation Policy & Economic Regulation* 312, 321 (John D. Bitzan & James H. Peoples eds., 2018). The less a motor carrier charges, the wider the spread and the greater the profit for the

¹⁹ <https://www.freightwaves.com/news/california-carrier-closes-doors-terminates-over-100-employees>.

²⁰ <https://cdllife.com/2025/family-owned-trucking-company-files-for-chapter-11-bankruptcy-protection-in-colorado-court>.

²¹ <https://www.freightwaves.com/news/california-trucking-company-closes-after-40-years-in-business>.

broker. Intrinsic to this business model is an incentive for brokers to hire cheap motor carriers.

There is a corresponding incentive for motor carriers to minimize how much they charge, in order to secure business from the brokers deciding who will carry freight. Competition to offer low rates is increasingly intense. See Yao “Henry” Jin et al., *To Survive and Thrive under Hypercompetition: An Exploratory Analysis of the Influence of Strategic Purity on Truckload Motor-Carrier Financial Performance*, 56 Transp. J. 1, 20 (2017) (describing “intense price competition”). There are around 580,000 active motor carriers registered with the Federal Motor Carrier Safety Administration (FMCSA) that own or lease at least one tractor. *Economics and Industry Data*, Am. Trucking Ass’n, *supra*. The barriers to entry for new motors carriers are low. To become an authorized motor carrier, one must complete an online form, submit a \$300 fee, and obtain \$750,000 in liability insurance. 49 C.F.R. § 385.303; *id.* § 387.303T(b)(2)(i).

As a result, new, under-capitalized motor carriers—willing to cut costs by foregoing safety measures and evading regulatory compliance—can easily enter the market and underbid responsible legacy motor carriers. See Wonmongo Lacina Soro, Narelle Haworth & Ashim Kumar Debnath, *The relationships between financial performance and driver compensation and safety outcomes in the trucking industry: a systematic review*, 45 Transp. Revs. 239, 240 (2025) (“The trucking industry is characterised by high levels of competition among carriers, creating economic pressure that leads them to underbid, reduce safety investments and pressure drivers to work faster and longer than legally required.”). Often, compliant motor carriers simply

cannot compete. See Noi Mahoney, *Noncompliant carriers defying hours-of-service rules are undercutting compliant fleets*, Freight Waves (Nov. 12, 2025) (describing how non-compliant carriers can operate at a cost of around \$1.80 per mile, while compliant operators must spend \$2.30 per mile).²² This means “[g]ood, legacy fleets—40-year companies—are shutting down,” while noncompliant fleets “are expanding.” *Id.*

Importantly, when under-capitalized, unsafe motor carriers are involved in motor vehicle crashes, they can easily evade responsibility. Many carry the minimum liability insurance required, which covers only a small fraction of the actual cost of a crash. *Crash Cost Methodology Report*, U.S. Dep’t of Transp., Fed. Motor Carrier Safety Admin., 5 (2024) (setting the cost of a fatal crash with a commercial motor vehicle, for use in benefit-cost analyses, at \$14,535,460).²³ And when they lose their motor carrier authority due to noncompliance, they can dissolve, reincarnate themselves under new identities, and reenter the market—where they can once again underbid compliant motor carriers. Such reincarnation is not legal, but FMCSA lacks the resources to identify or penalize so-called “chameleon carriers.” See 49 C.F.R. § 385.1005 (prohibiting two motor carriers from using “common ownership, common management, common control, or common familial relationship” to avoid compliance or mask a history of non-compliance); GAO-12-364, *Motor Carrier Safety*:

²² <https://www.freightwaves.com/news/eld-loopoles-fueling-fraud-driving-good-carriers-out-of-business-experts-warn>.

²³ <https://www.fmcsa.dot.gov/safety/data-and-statistics/fmc-pre-240812-001-federal-motor-carrier-safety-administration-crash> (last visited Dec. 1, 2025).

New Applicant Reviews Should Expand to Identify Freight Carriers Evading Detection, U.S. Gov’t Accountability Off. (Mar. 22, 2012) (explaining FMCSA does not have sufficient resources “to investigate each of the tens of thousands of new applicants that register annually and then complete a legal process for some of these suspected chameleon carriers”).²⁴

This hyper-competitive market does not merely pose a financial challenge for law-abiding motor carriers. It opens the door to industry abuse. A prime example is the recent misuse of the non-domiciled commercial driver’s license (CDL) system. A non-domiciled CDL is a commercial license issued to an individual who is not domiciled in the state of issuance. While the non-domiciled CDL system was initially intended to enable residents of one U.S. state to obtain CDLs and work in another U.S. state, it has come to be used for drivers domiciled in foreign jurisdictions that do not conform with U.S. licensing standards. 49 C.F.R. § 383.71(f); *see* Sean Duffy, *Tr. of Big Rig Safety Press Conference*, Rev.com (Oct. 30, 2025) (“[S]ay I’m in Wisconsin and I want to drive truck in Texas, a lot of jobs down there, and I would get a commercial driver’s license, a non-domiciled one in the state of Texas.”).²⁵

Some members of the commercial trucking industry view the non-domiciled CDL system as beneficial in theory. *See* Rich Mendez, *CEO of major logistics firm makes a pitch to immigrants to address shortage of truck drivers*, CNBC (Oct. 27, 2021) (“C.H. Robinson’s Robert Biesterfeld said immigration could help alleviate

²⁴ <https://www.gao.gov/assets/gao-12-364.pdf>.

²⁵ <https://www.rev.com/transcripts/big-rig-safety-press-conference>.

truck driver shortages that have increased 30% since before the pandemic.”).²⁶ But in practice, inadequate federal oversight and rampant errors by state licensing authorities have invited irresponsible motor carriers to exploit foreign labor to keep costs low. These motor carriers hire drivers from foreign jurisdictions who are willing to accept lower wages, and who can easily obtain non-domiciled CDLs without meeting federal requirements related to testing, training, and lawful immigration status. *See* 49 C.F.R. § 383.23(b)(1), (2); *id.* at § 383.71(f).²⁷ Brokers contribute to the problem. *See* Adam Wingfield, *Are Some Brokers Willingly Using Known Non-Domiciled Drivers to Save Margins*, Freight Waves (Oct. 27, 2025) (“Let’s be honest. If you’re moving cheap freight, you can’t afford to get picky. That’s the ugly truth of it.”).²⁸

As the U.S. Department of Transportation recently recognized, the “catastrophic pattern” of states improperly issuing non-domiciled CDLs to unqualified drivers has created an “imminent hazard on America’s roadways.” *Trump’s Transportation Secretary Sean P. Duffy Takes Emergency Action to Protect Americas*

²⁶ <https://www.cnn.com/2021/10/27/ch-robinson-ceo-makes-pitch-to-immigrants-to-address-trucker-shortage.html>.

²⁷ On September 29, 2025, the U.S. Department of Transportation issued an interim final rule amending the requirements for non-domiciled CDLs. Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 90 Fed. Reg. 46,509 (Sept. 29, 2025). The U.S. Court of Appeals for the District of Columbia Circuit has stayed the interim rule pending review. *Order, Lujan, et al. v. Fed. Motor Carrier Safety Admin., et al.*, No. 25-1215 (Nov. 13, 2025).

²⁸ <https://www.freightwaves.com/news/are-some-brokers-willingly-using-known-non-domiciled-drivers-to-save-margins>.

Roads, Restrict Non-Domiciled CDLs, U.S. Dep’t of Transp. (Sept. 26, 2025).²⁹ Indeed, a recent audit showed that over 25% of non-domiciled CDLs issued in California were invalid. *Id.* Similar patterns were found in Colorado, Pennsylvania, South Dakota, Texas, and Washington. *Id.* Several recent motor vehicle crashes illustrate the resulting safety hazards. For example, on August 12, 2025, an unqualified driver with an improperly issued CDL caused a crash that killed three people in Florida. Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 90 Fed. Reg. 46,509 (Sept. 29, 2025) (Interim Final Rule), 13–14. The driver had attempted to execute an illegal U-turn when he crossed in front of a minivan, which crashed into the truck and became lodged under its trailer. *Id.* at 13. The driver lacked lawful immigration status, was not proficient in English, and had previously been cited for speeding. *Id.* at 14; see 49 C.F.R. § 391.11(b)(2) (requiring drivers to be proficient in reading and speaking English to ensure they can communicate with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records). On March 14, 2025, an unqualified driver with an improperly issued CDL caused a crash that involved seventeen vehicles, killed five people—including two children—and injured eleven others. Interim Final Rule, at 15. A post-crash investigation revealed that the driver’s record showed prior citations for failure to obey signage and erratic lane changes. *Id.* at 16. He lacked a current medical certificate and

²⁹ <https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-takes-emergency-action-protect-americas>.

had violated hours of service regulations multiple times in the two weeks preceding the crash. *Id.*

In addition to threatening the motoring public, this abuse and its associated safety hazards threaten careful, qualified truckers. *See Large Truck and Bus Facts 2022*, U.S. Dep’t of Transp., Fed. Motor Carrier Safety Admin. (Sept. 2025), 7 (noting 1,097 large truck occupant fatalities in 2022).³⁰ Motor vehicle operators experienced the most fatalities of all civil occupations in 2023. *See National Census of Fatal Occupational Injuries in 2023*, U.S. Dep’t of Lab., Bureau of Lab. Stat. (noting 5,415 motor vehicle operator fatalities between 2019 and 2023)³¹; Tyson Fisher, *More truck drivers killed on the job than workers in any other occupation*, Landline Media (Jan. 2, 2025) (“[T]he job of a trucker remains one of the most dangerous in the United States.”).³²

III. Tort Liability Is Essential to Prevent an Unchecked Race to the Bottom.

Against this backdrop, it is essential that state law tort claims continue to ensure brokers face accountability when they negligently hire unsafe carriers and drivers, leading to fatal or injurious motor vehicle crashes. As Petitioner points out, Pet. Br. 39, 41, negligent hiring claims have been hornbook law throughout the country for almost a century. *See* Restatement

³⁰ <https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2022-1>.

³¹ <https://www.bls.gov/news.release/cfoi.t03.htm> (last visited Dec. 1, 2025).

³² <https://landline.media/more-truck-drivers-killed-on-the-job-than-workers-in-any-other-occupation/>.

(First) of Torts § 411 (A.L.I. 1934) (“[O]ne who employs an independent contractor to . . . do work which involves risk of bodily harm unless it is skillfully and carefully done . . . is subject to liability for bodily harm caused by the failure to exercise reasonable care to employ a competent contractor.”); *see id.* illus.2 (using a fact pattern involving an inexperienced driver who causes a motor vehicle crash to illustrate the tort of negligence in selection of contractor). While long-standing tort liability for negligent hiring has not eliminated the issues outlined above, it imposes a necessary counterpressure on industry incentives—encouraging responsible conduct and preventing an unchecked race to the bottom. Removing that counterpressure would lead to more and greater industry abuse, push safe and compliant motor carriers out of the market altogether, and compromise public safety.

Fortunately, the plain text of the FAAAA preserves negligent hiring claims against brokers. By its terms, the FAAAA excepts from the scope of preemption any laws invoking “the safety regulatory authority of a State with respect to motor vehicles.” 49 U.S.C. § 14501 (c)(2)(A). To invoke this “safety exception,” a state law must meet two requirements. It must be: (1) part of a state’s “safety regulatory authority” (2) “with respect to motor vehicles.” *Id.*

Regarding the first requirement, a negligent hiring claim against a broker is clearly part of a state’s safety regulatory authority. *See Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (holding that state common-law duties and standards of care are a form of state regulation designed to be “a potent method of governing conduct and controlling policy” (internal quotation and citation omitted)). “Historically, common

law liability has formed the bedrock of state regulation.” *Desiano v. Warner-Lambert & Co.*, 467 F.3d 85, 86 (2d Cir. 2006). And a negligent hiring claim is “genuinely responsive to safety concerns.” *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 442 (2002); *see also* Restatement (Third) of Torts: Phys. & Emot. Harm § 6 cmt. d (A.L.I. 2010) (“[A] justification for imposing liability for negligence is to give actors appropriate incentives to engage in safe conduct.”).

Regarding the second requirement, a negligent hiring claim against a broker is part of a state’s safety regulatory authority “*with respect to motor vehicles.*” 49 U.S.C. § 14501(c)(2)(A) (emphasis added). Congress defines the service of a “broker” as “selling, providing, or arranging for, transportation by motor carrier for compensation.” 49 U.S.C. § 13102(2). And it defines a “motor carrier” as a “person providing motor vehicle transportation.” 49 U.S.C. § 13102(14). Combining these definitions, a claim against a broker for negligently arranging motor vehicle transportation by an unsafe motor carrier, resulting in a motor vehicle crash, is necessarily “with respect to motor vehicles.” *See Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1031 (9th Cir. 2020) (“[N]egligence claims against brokers, to the extent that they arise out of motor vehicle accidents, have the requisite connection with motor vehicles.” (internal quotations omitted)).

Looking beyond the plain text of the statute, it is clear that Congress did not intend to foreclose negligent hiring claims against brokers because it did not replace states’ historic police power with meaningful broker safety regulations. Motor carriers are subject to extensive federal safety regulations and tort liability when their negligent conduct causes death or injury.

See, e.g., 49 C.F.R. Parts 383–399; Resp’ts Br. Supporting Cert. 14 n.5 (acknowledging the FAAAA preserves tort liability for motor carriers). But by stark contrast, brokers are subject to few federal safety regulations. *See* 49 U.S.C. § 31136(a)(5) (directing the Secretary of Transportation to “prescribe regulations on commercial motor vehicle safety” that “shall ensure that . . . an operator of a commercial motor vehicle is not coerced by a . . . transportation intermediary [i.e., broker] to operate a commercial motor vehicle in violation of a regulation promulgated under this section”). There is no penalty if a freight broker negligently, recklessly, or even intentionally hires an unsafe motor carrier, resulting in a crash. In the absence of meaningful safety regulations for brokers, immunizing them from tort liability would leave them uniquely exempt from the consequences of their misconduct.

Ordinarily, when Congress chooses to foreclose state law tort liability for unsafe conduct from a particular actor or industry, it ensures that adequate safety regulations are in place. For example, when Congress passed the Protection of Lawful Commerce in Arms Act (PLCAA) in 2005, 119 Stat. 2095 (codified as amended at 15 U.S.C. § 7901–03), it preempted civil liability against firearm manufacturers resulting from harm caused by the misuse of firearms by third parties. It noted that lawsuits against firearm manufacturers are “an abuse of the legal system” that “erode[] public confidence in our Nation’s laws.” 15 U.S.C. § 7901(a)(6). In passing the PLCAA, Congress emphasized that “the manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are *heavily regulated* by Federal, State, and local laws.” *Id.* at § 7901(a)(4) (emphasis added).

Thus, Congress determined that tort liability was neither appropriate nor necessary for safety.

In short, it is implausible that Congress sought to immunize brokers from tort liability when their negligence leads to fatal or injurious motor vehicle crashes. Any time the government provides immunity from suit, it picks economic winners and losers. Betsy J. Grey, *Removing Torts*, 62 Harvard J. on Legis. 135, 136 (2025). “This choice puts government’s thumb on free market forces.” *Id.* There is no reason to believe Congress chose negligent brokers to be economic winners, leaving responsible motor carriers and the motoring public to lose.



CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

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