No. 24-1238

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

BRIEF OF *AMICUS CURIAE* GERGANA FRANCO IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Gergana Franco is a private plaintiff bringing a negligent contracting claim against Jack Cooper Transport Company, LLC—which is responsible for providing transportation to General Motors—in the case *Franco v. BRNV Inc. et al.*, Case No. 1:23-cv-812 (S.D. Ohio). Ms. Franco's father died when two drivers who couldn't speak or read English, Aleksandr Kozhukar and Yuriy Bobrov, ran out of gas in the middle of a lane on I-75. Jack Cooper argues below that the Federal Aviation Administration Authorization Act ("FAAAA") preempts Ms. Franco's state law negligent hiring claim.

As a private litigant whose case will be governed by the *stare decisis* effect of this Court's ruling, Ms. Franco has a strong interest in having her counsel's arguments presented to the Court. *N. Sec. Co. v. United States*, 191 U.S. 555, 555–56 (1903) (Justice Fuller, in chambers) (collecting cases).

Ms. Franco asserts that under a textualist reading of the FAAAA, the preemption clause affects only laws that "single out" the transportation industry. *Columbus v. Ours Garage & Wrecker Serv.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting) (cited with approval in *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 & n.4 (2013)). Common law negligent hiring claims apply to all industries—not just transportation—so they aren't preempted. No federal appellate Court has fully considered this argument, so Ms. Franco presents it here.

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[1] No party's counsel authored any part of this brief. No person or entity, other than *amicus* and its counsel, paid for the brief's preparation or submission.

SUMMARY OF ARGUMENT

For decades, there was a "near-universal" consensus that the FAAAA did not preempt negligent hiring or contracting claims against freight brokers. *Vitek v. Freightquote.com, Inc.*, No. JKB-20-274, 2020 U.S. Dist. LEXIS 73544, at *9 (D. Md. Apr. 27, 2020); *see also* Appendix (compiling decades of trial court cases rejecting these preemption arguments).

The new idea that the FAAAA preempts generally applicable state tort law claims is based on an analytical error that Justice Scalia warned against decades ago. *City of Columbus v. Ours Garage & Wrecker Serv.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting) (quoted with approval in *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 & n.4 (2013)). Under a textualist reading, the FAAAA preempts only regulations that "single out" the transportation industry. *Ours Garage,* 536 U.S. at 449. This is because the statute preempts only state laws governing carriers and brokers "with respect to the transportation of property." 49 U.S.C. 14501(c)(1).

This phrase "massively limits the scope" of preemption. *Dan's City*, 569 U.S. at 261 & n.4. For a law to be preempted, it must be targeted at the "transportation of property." *Id.* State common law negligence claims do not single out the transportation industry, so they are not preempted.

When courts hold otherwise, they mistakenly apply case law on the Airline Deregulation Act ("ADA")—which does preempt generally applicable laws—to the FAAAA, which does not. This is an analytical error, because the ADA lacks the FAAAA's limiting phrase: "with respect to the transportation of property." The ADA is thus broader than the FAAAA.

ARGUMENT

I. The FAAAA Preempts Only Laws That Single Out the Transportation Industry.

The FAAAA preempts State laws "related to a price, route, or service" of a motor carrier or broker "with respect to the transportation of property." 49 U.S.C. §14501(c)(1). The latter phrase—"with respect to the transportation of property"—"massively limits the scope" of the FAAAA's preemption clause. *Dan's* City, 569 U.S. at 261 & n.4. For a law to be preempted, it must "concern a motor carrier's 'transportation of property.'" *Id.* at 261. Under a textualist reading of the FAAAA, State laws that do not "single out for special treatment 'motor carriers of property'" are not preempted. *Ours Garage*, 536 U.S. at 449 (Scalia, J., dissenting).

States remain free to pass generally applicable laws, such as "general traffic safety laws." *Id.* Motor carriers and brokers remain bound by status-neutral laws of "general applicability," like having to pay minimum wage. *People ex rel. Harris v. Pac Anchor Transp., Inc.*, 59 Cal. 4th 772, 786 (Cal. 2014). So long as the State law is neutral as to one's status as a motor carrier (or broker), it is not preempted. *Ours Garage*, 536 U.S. at 449.

Here, Ohio's common law of negligent hiring and contracting is a generally applicable body of law. It is neutral as to whether someone is a broker or a motor carrier, and it does not "single out" the trucking industry for "special treatment." *Ours Garage*, 536 U.S. at 449 (Scalia, J., dissenting). It thus falls outside the FAAAA's preemption clause.

Recently, some Courts—departing from the textualist approach laid out by Justice Scalia and adopted by a unanimous Court in *Dan's City*—have gone the other way. But none of these cases have properly analyzed Justice Scalia's textualist analysis. As a result, these cases suffer from an analytical error because they miss a key difference between the text of the FAAAA and another statute, the Airline Deregulation Act ("ADA").

For example, in *Ye v. GlobalTranz Enters.*, the Seventh Circuit found that negligent hiring claims against brokers are preempted because it interpreted a case under the ADA—*Morales v. TWA*—as mandating that conclusion. 74 F.4th 453, 458 (7th Cir. 2023). In *Morales*, Justice Scalia, writing for the majority, held that the ADA preempts State consumer protection laws when they interfere with the advertising of airline fares because such laws "relate to" an airline's prices or services. 504 U.S. 374, 378 (1992).

But when it analyzed the scope of the FAAAA's preemption clause, the Seventh Circuit overlooked Justice Scalia's later analysis of the FAAAA in his *Ours Garage* dissent, in which he explained that the FAAAA does not preempt such generally applicable laws. *Ours Garage*, 536 U.S. at 449. Justice Scalia's two seemingly divergent opinions are easily reconciled.

As Justice Scalia noted, the ADA and the FAAAA differ in one key respect—the FAAAA contains the extra phrase "with respect to the transportation of property" that "massively limits" its scope:

FAAAA	**ADA**
(c) Motor Carriers of Property.— (1) General Rule.— Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of two 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 (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder **with respect to the transportation of property**. 49 U.S.C. § 14501(c)(1).	(b) Preemption.— (1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 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 an air carrier that may provide air transportation under this subpart. 49 U.S.C. § 41713(b)

So while the ADA preempts *all* State laws on airline prices, routes, and services, the FAAAA only preempts State laws that "single out" the "transportation of property." *Id.*; § 14501(c)(1). This

explains why Justice Scalia's opinion on the ADA in *Morales* does not conflict with his opinion on the FAAAA in *Ours Garage*.

Based on Justice Scalia's analysis, the FAAAA does not preempt state common law claims for negligent contracting or hiring. These common law claims do not "single out" the transportation industry. They apply equally across all industries.

In *Ye*, the Seventh Circuit cross-applied Justice Scalia's analysis to the safety exception, holding that the phrase "with respect to motor vehicles," like its counterpart in the preemption provision, "massively limits the scope" of the safety exception. 74 F.4th at 460 (quoting *Dan's City Used Cars*, 569 U.S. at 261).

By reading the phrase "with respect to," to mean "concerns," and thus to require a "direct" relationship between the law at issue and motor vehicle safety, the Seventh Circuit found negligent hiring claims to fall outside the safety exception. *Id.* at 460, 465.

But even though the *Ye* court's safety exception analysis began by cross-applying Justice Scalia's reading of "with regard to" onto the safety exception, the court ignored his reading in the context where it originated—the preemption clause. *See generally id.*

Only by ignoring Justice Scalia's analysis in its original context could the *Ye* court reach its incongruous conclusion that negligent hiring claims are laws "with respect to the transportation of property" but not "with respect to motor vehicles."

Treating identical words identically, negligent hiring claims must be either "with respect to" both (as Petitioner contends), or "with respect to" neither (as *Amicus* argues). The Court should reject Respondent's invitation to apply divergent readings.

CONCLUSION

It is hard to believe that "Congress, in its mission to unencumber the interstate trucking industry from a patchwork of state tariffs, price controls, and similar economic regulations" also aimed to "completely unyoke" brokers from "commonsense standards of care." *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 810 (N.D. Ind. 2022).

The law of negligence is "not specific to the trucking industry." *Id.* It applies across "all industries and walks of life." *Id.* This Court should follow Justice Scalia's textual analysis of the FAAAA, and it should hold that the FAAAA's preemption clause does not reach generally applicable common law claims of negligence at all.

Respectfully submitted,

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DECEMBER 5, 2025

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LOWER COURT CASES

Below follows a list of lower court cases where negligent hiring or contracting claims were not preempted.

Federal District Court Cases. *Rivera v. Convoy, Inc.*, No. 3:23-CV-01353, 2025 WL 2098129 (D. Conn. July 25, 2025); *Glover v. Argonaut Ins.*, No. 22-445-SDD-SDJ, 2025 WL 1805708 (M.D. La. June 30, 2025); *Hawkins v. Milan Express*, Inc., 735 F. Supp. 3d 933, 937–40 (E.D. Tenn. 2024); *Meek v. Toor*, No. 2:21-cv-0324, 2024 WL 943931 (E.D. Tex. Mar. 5, 2024); *Milne v. Move Freight Trucking*, No. 7:23-CV-432, 2024 WL 762373 (W.D. Va. Feb. 20, 2024); *Crawford v. Move Freight Trucking, LLC*, No. 7:23-cv-433, 2024 WL 762377 (W.D. Va. Feb. 20, 2024); *Wardingley v. Ecovyst Catalyst Techs., LLC*, 639 F. Supp. 3d 803, 806–12 (N.D. Ind. 2022); *Carter v. Khayrullaev*, No. 4:20-cv-00670-AGF, 2022 WL 9922419 (E.D. Mo. Oct. 17, 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 583–84 (D. Md. 2022); *Mata v. Allupick, Inc.*, No. 4:21-cv-00865, 2022 WL 1541294 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945, 2021 WL 5493076 (D.N.M. Nov. 23, 2021); *Taylor v. Sethmar Transp.*, No. 2:19-cv-00770, 2021 WL 4751419 (S.D. W. Va. Oct. 12, 2021); *Bertram v. Progressive S. Ins.*, No. 19-CV-01478, 2021 WL 2955740 (W.D. La. July 14, 2021); *Ciotola v. Star Transp. & Trucking, LLC*, 481 F. Supp. 3d 375, 384–90 (M.D. Pa. 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, 320–22 (D. Mass. Aug. 14, 2020); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. 1:18-00536, 2019 WL 1410902 (S.D.W. Va. Mar. 28, 2019); *Mann v. C.H. Robinson*

Worldwide, Inc., 2017 WL 3191516 (W.D. Va. Jul. 27, 2017); *Nyswaner v. C.H. Robinson Worldwide Inc.*, 353 F. Supp. 3d 892 (D. Ariz. 2019); *Finley v. Dyer*, 2018 WL 5284616 (N.D. Miss. Oct. 24, 2018); *Morales v. Redco Transp. Ltd.*, No. 5:14-cv-129, 2015 WL 9274068 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409 (M.D. Tenn. Dec. 6, 2011).

State Appellate Court Cases. *Simon v. Coyote Logistics, LLC*, 50 Fla. L. Weekly 2269 (Dist. Ct. App. 2025); *Kaipust v. Echo Glob. Logistics, Inc.*, 2025 IL App (1st) 240530; Quinones v. Ladejo, 174 N.E.3d 407, 496–501 (Ohio Ct. App. 2021).

State Trial Court Cases. *Avendano v. C.H. Robinson Co.*, No. D-101-CV-2020-02619 (N.M. 1st Dist. July 11, 2025); *Roth v. GG Cargo Grp.*, No. 2024-CV-0539 (Erie Cty. (Ohio) Common Pleas Court, May 1, 2025); *Hester v. Toussaint*, No. 23-CI-00073 (Marshall (Kentucky) Circuit Court Apr. 2, 2025); *Martinez v. Mountain States Constructors, Inc.*, No. D-101-CV-2023-02466 (New Mexico First Judicial Dist. Ct. Feb. 11, 2025); *Spangler v. Matthew Small, et al.*, No. 06D01-2010-CT-001313 (Boone (Indiana) Superior Ct., Jul. 1, 2024); *Roderick v. Pences Milk Transport, Inc.*, No. 2022 CV 02312 (Montgomery Cty. (Ohio) Common Pleas Ct., Jun. 20, 2024); *Prieto v. Campo*, No. 2022-002251-CA-01 (Fla. Cir. Ct. Apr. 24, 2024); *Cogdill v. RG & EV Logistics and C.H. Robinson Worldwide, Inc.*, No. 22NM-CV00463 (Cir. Ct. Mo. (New Madrid Cty.) Apr. 3, 2024); *Gulley v. Woodfork*, No. CV-2022-900033.80 (Ala. Cir. Ct. Feb. 5, 2024); *Ruff v. Reliant Transport., Inc.*, Case No.

CI23-415 (Neb. Dist. Ct. Jan. 31. 2024); *Black v. J. Holmes Trucking LLC, Total Quality Logs.*, No. 22-CvS-1565 (N.C. Super. Ct. Dec. 8, 2023); *Morales v. Bataineh*, Cause No. 5075 (Tex. Dist. Ct. Nov. 28, 2023); *Kaipust v. Echo Global Log., Inc.*, No. 22-L10688 (Ill. Cir. Ct. Nov. 17, 2023); *Dyer v. Crowley Gov't Servs. Inc.*, Case No. 21PUCV0081 (Mo. Cir. Ct. Nov. 17, 2023); *Moeai v. Jones*, Case No. A-22-851828-C (Dist. Ct. Nev. Oct. 18, 2023)*; *Mertz v. Coker Transp.*, No. 2022-195245-NI (Circuit Ct. Oakland, MI May 3, 2023); *Kernan v. Plateau Transp., LLC*, No. 21-CI-00886 (Ky. Cir. Ct. Oct. 19, 2022); *Hentz v. Kimball Transp., Inc.*, No. 2017CA000155AN (Fl. Cir. Ct. Aug. 10, 2022); *Lagrange v. Boone*, 337 So. 3d 921, 928–30 (La. Ct. App. 2022); *Stewart v. L & L Transp.*, Admin. Or. No. 1916-CV15876 (Mo. Cir. Ct. Jan. 6, 2020); *Miller v. FLS*, Admin. Or. No. 1916-CV21814 (Mo. Cir. Ct. Dec. 3, 2019); *Waughon v. Ford Motor Co.*, 2019 WL 8223692 (Fla. Cir. Ct. Nov. 8, 2019); *Jones v. Singh*, No. STK-CV-UAT-2018-0011921 (Cal. Super. Ct. Apr.12, 2019); *Mendez v. BMS Trucking Inc.*, No. C114-346 (Neb. Dist. Ct. Mar. 28, 2019); *Whitinger v. Dhillon*, No. CJ-2013-120 (Okla. Dist. Ct. Nov. 17, 2017); *Evans v. Primoris Serv. Corp.*, 2017 WL 11565277 (Tex. Dist. Ct. July 27, 2017); *Segura v. C.H. Robinson*, No. C-2572-16- F (Tex. Dist. Ct. July 12, 2017); *Sharp v. 68 Transp.*, 2016 WL 9650516 (Okla. Dist. Ct. Sept. 13, 2016).