No. 24-1238

In the Supreme Court of the United States

SHAWN MONTGOMERY, PETITIONER

v.

CARIBE TRANSPORT II, LLC, ET AL.

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

BRIEF OF AIRLINES FOR AMERICA AS AMICUS CURIAE SUPPORTING RESPONDENTS

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INTERESTS OF AMICUS CURIAE

Airlines for America (A4A) is the Nation's oldest and largest airline trade association. In recent years, A4A's passenger carrier members and their marketing partners accounted for more than 90% of U.S. airline passenger and cargo traffic. Commercial aviation drives 5% of U.S. GDP and helps support more than 10 million U.S. jobs. A4A routinely files briefs in courts around the country to ensure that its members' voices are heard on matters that impact this vital segment of the American economy.*

Ensuring the uniformity of the laws and regulations governing interstate aviation through proper application of preemption principles is vitally important to A4A's members. Its members operate under complex federal regulatory regimes, which, properly construed, will often preempt the application of state and local law.

This case turns on application of the express preemption provision in the Federal Aviation Administration Authorization Act (FAAAA) of 1994, 49 U.S.C. § 14501(c). The FAAAA's preemption provision was modeled on a similarly worded provision in the Airline Deregulation Act (ADA) of 1978, 49 U.S.C. § 41713(b)(1), which protects the airline industry from burdensome state regulation that could interfere with pro-consumer market forces. The parties in this case have invoked ADA preemption principles in debating whether the FAAAA preempts Petitioner Shawn

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* No counsel for a party authored this brief in whole or in part and no such counsel or a party, or any person other than A4A or its members. made any monetary contribution intended to fund the preparation or submission of this brief.

Montgomery's negligent hiring claim, and Montgomery has argued that the ADA's preemption provision has a narrow scope and should rarely if ever apply to state law tort claims. Montgomery's arguments are wrong, and if accepted, threaten to upset longstanding rules governing the airline industry by allowing private plaintiffs to regulate airline operations through state tort law. A4A submits this brief to correct Montgomery's departures from settled FAAAA and ADA preemption principles.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court granted certiorari to resolve whether the FAAAA's preemption provision, 49 U.S.C. § 14501(c), "preempt[s] a state common-law claim against a broker for negligently selecting a motor carrier or driver." Pet. at i. The answer to that question should turn narrowly on whether Petitioner's claim falls within the § 14501(c)(2)(A)'s exception for motor vehicle safety regulations. That's because, under this Court's well-established precedents interpreting the FAAAA's and ADA's similarly worded preemption provisions, there can be no question about whether Petitioner's claim falls within the general scope of the FAAAA's preemption provision.

The FAAAA's "[g]eneral rule" provides that 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." 49 U.S.C. § 14501(c)(1). Congress modeled that rule on the ADA's preemption provision, which provides that 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." *Id.* § 41713(b)(1). This Court, in turn, "follow[s]" its ADA preemption precedent in interpreting the scope of FAAA preemption. *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 370 (2008).

Even when the general rule applies, however, the FAAAA contains certain exceptions, including a safety exception that preserves "the safety regulatory authority of a State with respect to motor vehicles." *Id.* § 14501(c)(2)(A). The ADA, in contrast, does not contain an analogous exception.

The question presented thus turns on two subquestions. The first is whether Montgomery's claim is covered by the FAAAA's general preemption rule in § 14501(c)(1) because it relates to the services of a broker with respect to property transportation. The second is whether the safety exception saves Montgomery's claim even if it is covered by the general rule.

The second question is the one that should matter, because the answer to the first is straightforward under this Court's precedents. Put simply, Montgomery's negligent hiring claim asserts that a broker—C.H. Robinson—should be liable because it picked the wrong carrier to ship goods. The Court's precedents make clear that Montgomery's claim "relate[s] to a … service of any … broker … with respect to the transportation of property," 49 U.S.C. § 14501(c)(1), because it seeks to impose liability based on how a broker performed its core service—"selling, providing, or arranging for, transportation by motor carrier for compensation," *id.* § 13102(2). Indeed, every court of appeals in the circuit split that prompted this Court's intervention has held that this kind of claim is subject

to the FAAAA's general preemption provision—even the decisions that ultimately allowed such claims to proceed under the safety exception. *See Cox v. Total Quality Logistics, Inc.*, 142 F.4th 847, 853 (6th Cir. 2025); *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453, 459 (7th Cir. 2023); *Aspen American Insurance Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261, 1267 (11th Cir. 2023); *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024 (9th Cir. 2020). So the parties' focus should be whether Montgomery's facially preempted claim is nevertheless saved by the FAAAA's safety exception.

Unfortunately, Montgomery's brief would have the Court ignore its long-trusted instruments and fly blind. Montgomery claims there is "a strong argument that the FAAAA preemption provision does not reach safety-related torts in the first place," and thus that his claims should survive even if the safety exception doesn't apply. Br. 47. Worse, Montgomery says there is a settled consensus that the ADA's preemption provision—the model for the FAAAA's preemption provision—simply doesn't reach safety-related tort claims. Br. 47-48. Montgomery is wrong. The Court's precedents make clear that tort claims like Montgomery's fall squarely within both the ADA's and FAAAA's broad preemptive language. Montgomery also argues that his negligent hiring claim should survive because of the FAAAA's safety exception. The ADA lacks such an exception, so A4A doesn't address that question. But there is no doubt that Montgomery's claim is subject to the FAAAA's general rule in § 14501(c)(1), just as many tort claims are subject to ADA preemption.

1. The Court's precedents make clear that the ADA's and FAAAA's preemption provisions apply to common law claims, not just state statutes and

regulations. *See Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 281-82 (2014). And the Court's precedents hold that there are three ways a claim can impermissibly relate to a protected carriers prices, routes, or services—all three ways triggering ADA and FAAAA preemption.

First, a claim may directly "reference" the carrier's prices, routes, or services. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Claims "reference" protected activity if they "act[] immediately and exclusively upon" that activity or its "existence … is essential to the [claim]'s operation." *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. 312, 319-20 (2016).

Second, a claim may "have a connection" to the carrier's prices, routes, or services, even if that connection is "indirect." *Rowe*, 552 U.S. at 370. For example, claims have an impermissible connection when they interfere with how the carrier selects or provides its prices, routes, or services. *See Northwest*, 572 U.S. at 284-85.

Third, the claim can have "a 'significant' and adverse 'impact'" on the regulatory objectives Congress sought to achieve by enacting the ADA and FAAAA. *Rowe*, 552 U.S. at 370-71. That occurs when allowing the claim would permit state law, rather than "competitive market forces," to impact "to a significant degree" "the rates, routes, or services that" the carrier "will provide." *Id.* at 372. As a result, for example, claims have an "significant impact" on a carrier's prices, routes, or services will be preempted. *Morales*, 504 U.S. at 390.

These multiple different paths to preemption underscore the ADA's and FAAAA's "broad pre-emptive purpose." *Morales*, 504 U.S. at 383. Congress made

the ADA's and FAAAA's preemption provisions "deliberately expansive" to get states out of the business of micromanaging carriers' business activities. *Id.* at 384. The different tests are simply different ways of getting to the same place: Ultimately, the ADA and FAAAA preempt any claims related to a carrier's prices, routes, or services as long as the connection is not "tenuous, remote, or peripheral." *Id.* at 390; *Rowe*, 552 U.S. at 371.

2. At the very least, Montgomery's claim relates to a broker's services because it directly references those services. C.H. Robinson is a broker. Its principal service is arranging for other companies to ship goods overland. 49 U.S.C. § 13102(2). Montgomery claims that C.H. Robinson is liable because it picked a trucking company with a poor safety record to deliver a shipment. That's about as direct and "obvious[]" a reference to a broker's services as it gets. *Morales*, 504 U.S. at 387-88. And C.H. Robinson's services are essential to the operation of Montgomery's claim.

Montgomery's contrary view—that safety-related tort claims are categorically exempt from the ADA's and FAAAA's general preemption provisions—finds no support in either statute. To the contrary, the Court's precedents do "not permit [courts] to develop broad rules concerning whether certain types of common-law claims are preempted by the ADA" or FAAAA. *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (7th Cir. 1996) (discussing *Morales*, 504 U.S. at 383-85). "Instead, [courts] must examine the underlying facts of each case to determine whether the particular claims at issue 'relate to' [carrier] rates, routes or services." *Id.* Sometimes, claims related to safety may have "too tenuous" a connection with the carrier's prices, routes,

and services to fall within the preemption provision. *Morales*, 504 U.S. at 390. To take one of Montgomery's examples, one wouldn't typically think that claim alleging that an airline fired an employee for reporting violations of FAA regulations has much of a connection with an airline's services. *Watson v. Air Methods Corp.*, 870 F.3d 812, 814 (8th Cir. 2017) (en banc). But that doesn't mean that incanting a safety rationale for a claim in the plaintiff's complaint writes the ADA and FAAAA out of the picture. For example, in *Witty v. Delta Air Lines, Inc.*, 366 F.3d 380, 382 (5th Cir. 2004), the Fifth Circuit held that the ADA preempts state common law claims seeking to require airlines to offer greater leg room to reduce the risk of blood clots, even though that sort of claim is obviously safety-related.

3. Montgomery's claim is likely also subject to the FAAAA's general preemption provision under the connection and significant impact tests. The claim is arguably connected to C.H. Robinson's services because it seeks to impose liability based on how C.H. Robinson performed those services. *See Northwest*, 572 U.S. at 284. And allowing the claim would arguably have a significant adverse impact on the FAAAA's ability to achieve Congress' deregulatory objectives because it seeks to use state law rather than market forces to prohibit C.H. Robinson from selecting carriers with arguably checkered safety records. *See Rowe*, 552 U.S. at 370-72. But the Court ultimately does not need to address those other paths to preemption because Montgomery's claim directly references C.H. Robinson's services, and is thus covered by the FAAAA's general preemption provision.

Ultimately, Montgomery's negligent hiring claim is subject to § 14501(c)(1). The question isn't close. The Court should reject Montgomery's invitation to

rewrite settled ADA and FAAAA preemption principles and decide this case solely based on whether Montgomery's claim qualifies for the FAAAA's safety exception.

ARGUMENT

I. Montgomery's negligent hiring claim is subject to the FAAAA's general preemption provision because it directly references, and thus relates to, C.H. Robinson's covered property transit services.

The FAAAA's preemption provision encompasses any state "law, regulation, or other provision having the force and effect of law related to a price, route, or service of … any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). This Court's precedents have long established that this provision reaches as least claims that directly "reference" a broker's prices, routes, or services, *see Morales*, 504 U.S. at 384; *Rowe*, 552 U.S. at 370, meaning that the covered activities are "essential" to the claim's "operation," *Gobeille*, 577 U.S. at 320. This rule applies to common law claims like those Montgomery asserts here. *Northwest*, 572 U.S. at 281-82.

Montgomery's claim relates to the "service of" a "broker … with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). C.H. Robinson is a broker, and its services include "selling, providing, or arranging for, transportation by motor carrier for compensation." *Id.* § 13102(2). Montgomery claims that C.H. Robinson is liable because it hired the wrong motor carrier to make property shipments to Texas and Arkansas. That claim directly references C.H. Robinson's broker services, and thus "obviously"

relates to covered activity. *Morales*, 504 U.S. at 387. The covered services are "essential" to Montgomery's claim's "operation," *Gobeille*, 577 U.S. at 320—the claim is incomprehensible without them.

Montgomery's counterarguments lack merit. His main contention (Br. 47-48) is that there is a consensus that the ADA's preemption provision simply doesn't reach safety-related tort claims, and since the FAAAA's preemption provision borrows the ADA's language, the FAAAA must not cover safety-related tort claims either. But Montgomery's core premise is wrong. Safety-related tort claims aren't categorically exempt from ADA preemption, and none of the cases Montgomery cites holds otherwise. That likewise means that Montgomery is wrong that his claim was never subject to the FAAAA's broad preemptive sweep. The question the Court must answer is not whether the FAAAA's general preemption provision covers his claims—it clearly does—but rather whether Montgomery's claim falls within the FAAAA's carveout for certain safety-related claims (a carveout the ADA lacks and A4A thus doesn't address).

A. Both the ADA and the FAAAA preempt state tort claims that directly reference a carrier's prices, routes, or services.

This Court's precedents make clear that the ADA's and FAAAA's preemption provisions reach at least all state tort claims that directly reference a carrier's prices, routes, or services.

1. The FAAAA preempts any "law, regulation, or other provision having the force and effect of law related to a price, route, or service of … any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C.

§ 14501(c)(1). Congress modeled the FAAAA's preemption provision after a similar provision in the ADA, *id.* § 41713(b)(1), and the two provisions are thus interpreted consistently with one another. *See Rowe*, 552 U.S. at 370.

The "key phrase" in both provisions "is 'relating to.'" *Morales*, 504 U.S. at 383. That phrase is "deliberately expansive" and "express[es] a broad pre-emptive purpose." *Id.* at 383-84. The Court has thus held that the ADA and FAAAA preempt any "[s]tate enforcement actions having a connection with, *or reference to*," a carrier's "rates, routes, or services." *Id.* at 384 (emphasis added); *Rowe*, 552 U.S. at 370. As the Court has explained "in addressing the similarly worded pre-emption provision of the Employee Retirement Income Security Act of 1974" (ERISA), *Morales*, 504 U.S. at 383, claims directly "reference" protected activity if they "act[] immediately and exclusively upon" that activity or its "existence … is essential to the [claim]'s operation," *Gobeille*, 577 U.S. at 319-20.

For example, in *Morales*, seven state attorneys general accused an airline of violating those states' generally applicable laws prohibiting "deceptive advertising and trade practices" by failing to adhere to guidelines explaining that airlines should include "all taxes and surcharges" in any "advertised fare." *Morales*, 504 U.S. at 379-80, 387. The states threatened to sue to enforce their guidelines, which various requirements about how fares must be disclosed. *Id.* at 380, 387-88. The Court held that the states' contemplated deceptive advertising claims "quite obviously" related to "airline rates" because they bore a direct "'reference to' airfares": The guidelines the states wished to enforce through their consumer protection

laws would directly regulate how fares must be disclosed. *Id.* at 387-88.

That was true even though the consumer protection laws at issue were generally applicable and the guidelines the state sought to enforce did not themselves "purport to 'create any new laws or regulations.'" *Id.* at 379. The Court rejected "the notion that only state laws specifically addressed to the airline industry are preempted, whereas the ADA imposes no constraints on laws of general applicability." *Id.* at 386. "Besides creating an utterly irrational loophole (there is little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute)," the Court explained, "this notion similarly ignores the sweep of the 'relating to' language." *Id.* That isn't the way preemption works under the similar preemption provision in ERISA, the Court explained, and it's not the way preemption works under the ADA. *Id.*

2. The same rule applies to common law tort claims. In *Northwest*, the Court held that "state common-law rules" count as "provision[s] having the force and effect of law," and thus "fall comfortably within the language of the ADA pre-emption provision." 572 U.S. at 281-82. Montgomery concedes as much. *See* Br. 44-45. That makes sense. A "common-law rule clearly has 'the force and effect of law.'" *Northwest*, 572 U.S. at 282. Tort claims are, of course, causes of action to enforce "common-law duties." *See, e.g.*, *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008) (collecting cases); *CSX Transportation, Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). So common law tort claims that directly reference a carrier's prices, routes, or services are covered by the ADA's and FAAAA's preemption

provisions. As the Court put it in *Northwest*, a state law "claim" is "'relate[d] to' 'rates, routes, or services' … if it has 'a connection with, *or reference to*, airline' prices, routes or services." 572 U.S. at 284 (emphasis added).

To be sure, common law duties are often generally applicable. *See, e.g.*, *Riegel*, 552 U.S. at 324. Thus, determining whether a common law claim references prices, routes, or services turns on the plaintiff's theory of liability against the carrier, rather than whether the plaintiff is seeking to enforce an airline-specific statute or regulation. *See Northwest*, 572 U.S. at 284 (conducting this analysis). But that kind of analysis isn't novel. Recall that in *Morales*, the Court held that the states' deceptive advertising claims referenced airfares because the states sought to require states to disclose taxes and fees when advertising fares, even though the states' generally applicable consumer protection laws did not themselves reference airfares. *Morales*, 504 U.S. at 379. The Court held that state law claims can be preempted "even if the law is not specifically designed to affect" carriers. *Id.* at 386. The same rationale applies to tort actions applying generally applicable common law claims designed to "govern[]" a carrier's "conduct and control[]" its "policy." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959); *see also Morales*, 504 U.S. at 386 (noting that ERISA preempts "common-law tort and contract suits").

Of course, *Northwest* definitively resolves this point. There, the Court confronted a passenger's claim for breach of the implied covenant of good faith and fair dealing, *Northwest*, 572 U.S. at 276, 281—even though that common law duty is a broad one. To "determine whether [the passenger's] breach of implied

covenant claim 'relate[d] to' 'rates, routes, or services,'" the Court looked to what the passenger's specific claim alleged and sought. *Id.* at 284. Because the claim sought the passenger's "reinstatement in Northwest's frequent flyer program" so the passenger could take advantage of accumulated mileage benefits that could be used to pay for tickets, affecting prices, the claim had the requisite connection to prices and was preempted. *Id.* That analysis makes clear that the preemption question turns on the particular claim itself and its connection to prices, routes, or services, not some supposed inherent quality of a generally applicable common law cause of action.

B. Montgomery's claim directly references C.H. Robinson's services and is thus covered by the FAAAA's general preemption provision.

Montgomery's negligent hiring claim directly references, and is thus "related to a price, route, or service of any … broker … with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). It is thus preempted unless the safety exception applies—an exception that does not exist in the ADA and thus a matter on which A4A takes no position here.

C.H. Robinson is a broker. A broker's services include "selling, providing, or arranging for, transportation by motor carrier for compensation." *Id.* § 13102(2). As Montgomery concedes, his complaint alleges that "C.H. Robinson was liable for negligently hiring Caribe Transport and Varela-Mojena even though it knew or reasonably should have known that their safety records were deficient." Br. 12-13. His common law claim thus directly references C.H. Robinson's services—arranging for transportation by

companies like Caribe Transportation. Indeed, those services are "essential" to the claim's "operation." *Gobeille*, 577 U.S. at 320. And the claim "respect[s] … the transportation of property," 49 U.S.C. § 14501(c)(1), because, as Montgomery explains, C.H. Robinson hired Caribe Transportation "to deliver a shipment from Ohio to Arkansas and Texas." Br. 11. Montgomery's claim thus falls under the FAAAA's general preemption provision.

That conclusion doesn't require the Court to break new ground. To the contrary, the opposite conclusion would contravene well-established principles. The courts of appeals have routinely recognized that negligent hiring claims against brokers are related to the broker's services with respect to transporting property. *See Cox*, 142 F.4th at 853; *Ye*, 74 F.4th at 459; *Aspen*, 65 F.4th at 1267; *Miller*, 976 F.3d at 1024. Indeed, even the decisions embracing Montgomery's position that negligent hiring claims aren't preempted reached that conclusion under the safety exception in 49 U.S.C. § 14501(c)(2)(A), not because any court thought that negligent hiring claims don't relate to a broker's services. *See Cox*, 142 F.3d at 852; *Miller*, 967 F.3d at 1024. They plainly do.

C. Montgomery's counterarguments fail.

Montgomery contends that there is "a strong argument that the FAAAA preemption provision does not reach safety-related torts in the first place," and thus that his claims should survive even if the safety exception doesn't apply. Br. 47. There isn't, and none of Montgomery's contrary contentions is persuasive.

1. Montgomery claims that the "statutory text is at best ambiguous as to whether [his] safety-related tort claims are 'related to a price, route, or service' of

any motor carrier or broker 'with respect to the transportation of property.'" Br. 46. But he doesn't explain why the text is supposedly unclear. That's probably because it's not. In *Morales*, as noted, the Court held that claims that directly "reference" a carrier's prices, routes, or services are covered by the ADA's preemption provision. 504 U.S. at 383-84. Congress was aware of *Morales* when it passed the FAAAA in 1994 and intended for its construction of the ADA's preemption provision to govern the FAAAA. *See Rowe*, 552 U.S. at 370. And in *Northwest*, this Court clarified that the ADA's and FAAAA's preemptive provisions reach common law claims. *See* 572 U.S. at 281-82. So there is no ambiguity about whether § 14501(c)(1) can apply to safety-related tort claims if those claims are related to prices, routes, and services. Nor is there any ambiguity about the provision's "broad pre-emptive purpose." *Morales*, 504 U.S. at 383.

If Montgomery's point is that it is unclear whether § 14501(c)(1) reaches safety-related tort claims because it doesn't specifically mention such claims, that is equally misguided. Again, § 14501(c)(1) turns on whether the plaintiff's claims are "related to a price, route, or service," not whether the claims are "consistent" with particular regulatory goals like promoting road safety. *Morales*, 504 U.S. at 386. If a claim relates to carrier or broker's price, route, or service, it is covered no matter its subject matter. As the Seventh Circuit explained in confronting a similar argument, the Court's precedents do "not permit [courts] to develop broad rules concerning whether certain types of common-law claims are preempted by the ADA." *Travel All Over the World*, 73 F.3d at 1433. "Instead, [courts] must examine the underlying facts of each case to determine whether the particular claims

at issue 'relate to' [carrier] rates, routes or services." *Id.* Whether Montgomery's claim concerns safety might be relevant to whether the safety exception applies, but it doesn't determine whether his claim is "related to" a covered carrier or broker's "price, route, or service." 49 U.S.C. § 14501(c)(1).

2. Montgomery argues (Br. 47-48) that the FAAAA must not cover safety-related tort claims because there is a consensus among lower courts that the ADA doesn't reach such claims, meaning the FAAAA must not reach them, either. That argument fails for two reasons. *First*, Montgomery misunderstands those decisions taken on their own terms. Those decisions do not suggest that the ADA does not reach safety-related tort claims. Rather, the courts in those cases found claims not preempted because they did not relate to the airline prices, routes, or services. *See Bower v. Egyptair Airlines Co.,* 731 F.3d 85, 95 (1st Cir. 2013) (stating in dicta that "personal injury claims are generally not preempted by the ADA," but finding claims before it preempted). *Second*, several of those decisions interpret § 41713(b)(1)'s "related to" and "service[s]" language too narrowly, relying on the notion, which this Court has since emphatically rejected, that courts should apply a presumption against preemption. The Court doesn't need to decide here whether those court of appeals decisions are correct, but the courts' reasoning in those respects makes little sense and doesn't support Montgomery.

a. Taking the court of appeals decisions on their own terms, start with *Day v. SkyWest Airlines*, 45 F.4th 1181, 1182 (10th Cir. 2022), *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1261 (9th Cir. 1998) (en banc), and *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 335 (5th Cir. 1995) (en banc). Those cases all

involved personal injury claims that the courts held were unrelated to prices, routes, or services. In *Day* and *Charas*, the courts held that the ADA did not preempt personal injury claims stemming from flight attendant striking a passenger with a beverage cart. 45 F.4th at 1182; 160 F.3d at 1261. And in *Hodges*, the court held not preempted a claim that overhead baggage arrangement caused a bottle of rum to drop on a passenger's head. 44 F.3d at 335. Those conclusions may have been wrong because, as discussed below (at 18-20), they too narrowly understand ADA preemption, but they nonetheless show, contrary to Montgomery's argument, that courts have not adopted a categorical rule that the ADA does not preempt safety-related or personal-injury tort claims.

Next, consider *Watson*, 870 F.3d at 814, and *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1251 (11th Cir. 2003). In those cases, the courts held that the ADA doesn't preempt claims that an airline retaliated against an employee for reporting violations of FAA regulations. But the courts reached those conclusions because, in their view, the claims before them didn't relate to prices, routes, or services. And the Eighth Circuit made clear in *Botz v. Omni Air International*, 286 F.3d 488, 494 (8th Cir. 2002), *overruled in part by Watson*, 870 F.3d at 814, that the ADA does preempt at least some safety-related claims—there, a claim for wrongful discharge for refusing to fly a trip based on a violation of federal safety regulations (a ruling *Watson* didn't disturb). Further, *Taj Mahal Travel, Inc. v. Delta Airlines Inc.*, 164 F.3d 186, 194 (3d Cir. 1998), held that the ADA doesn't preempt claims for defamation. A defamation claim often doesn't relate to prices, routes, or services, either. In all those cases, again, the court applied the "related

to" test—even if it did so incorrectly—rather than announcing Montgomery's supposed categorical rule that the ADA does not preempt safety- or personal injury-related tort claims.

In the end, then, Montgomery's argument doesn't fly. Putting aside whether Montgomery's circuit cases were correctly decided—as discussed below (at 18-20), this Court's precedents make clear that many of those decisions took too narrow a view of ADA preemption—the cases he cites stand only for the well-established proposition that claims that don't relate to prices, routes, and services aren't preempted. But, of course, that proposition doesn't suggest that claims that *do* relate to prices, routes, or services aren't preempted just because they have some kind of safety-related angle. In fact, the argument is particularly nonsensical given that the safety exception itself must contemplate that safety-related claims otherwise fall within the general preemptive scope of § 14501(c)(1).

b. What's more, several of the court of appeals decisions Montgomery relies on interpret the ADA's express preemption language in § 41713(b)(1)'s too narrowly. For starters, several of those decisions relied on a "presumption that Congress does not intend to supplant state law," *Taj Majal Travel*, 164 F.3d at 192, and that courts must "start with the assumption that the historic police powers of the States were not to be superseded" by the ADA. *Charas*, 160 F.3d at 1265. But this Court has since made clear that courts interpreting express preemption clauses "do not invoke any presumption against preemption." *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016). Rather, the statutory analysis is just like any other: It must "focus on the plain wording of the clause, which necessarily contains the best

evidence of Congress' preemptive intent." *Chamber of Commerce v. Whiting*, 563 U.S. 582, 594 (2011). And when "the language of the statute" "is plain," that "is also where the inquiry should end." *Franklin*, 579 U.S. at 125. Put simply, "courts must presume that a legislature says in a statute what it means and means … what it says." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

Some of those decisions then interpret the "related to" and "service[s]" language in § 41713(b)(1) too restrictively. As the Fifth Circuit has recognized, "the air carrier service bargain" is broad and "include[s] items such as ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself." *Hodges*, 44 F.3d at 336; *accord Branche*, 342 F.3d at 1257. Except for the Ninth Circuit, the courts of appeals that have addressed the issue have agreed with that understanding. *See Air Transportation Ass'n v. Cuomo*, 520 F.3d 218, 223-24 (2d Cir. 2008) (collecting decisions). Indeed, that broad approach is the only one that makes sense of the provision and accords with ordinary meaning. Even so, courts have concluded that personal injury claims arising from a collision with a beverage cart, *supra* p. 17, are not preempted. That conclusion shortchanges § 41713(b)(1)'s "related to" language, since the beverage service is central to, and certainly connected with, the claim.

Worse still, the Ninth Circuit, despite the plain meaning of "services"—as understood by the other courts of appeals—has read "services" to mean only "such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided," rather than as a term that includes "the dispensing of food and drinks,

flight attendant assistance, or the like." *Charas*, 160 F.3d at 1265-66. That makes little sense given § 41713(b)(1)'s reference to "routes" and the reality of airline services. It also contravenes this Court's precedents, which have held that frequent flier programs are related to an airline's services even though they have nothing to do with the frequency or scheduling of flights. *See Northwest*, 572 U.S. at 284.

The ADA's requirement that air carriers carry insurance "sufficient to pay … for bodily injury to, or death of, an individual or for loss of, or damage to, property of others, resulting from the operation or maintenance of the aircraft," 49 U.S.C. § 41112(a), doesn't support Montgomery or those circuit decisions, either. All that language suggests is that Congress recognized that airline operations could potentially give rise to some non-preempted personal-injury claims. Nothing in that language suggests that claims related to prices, routes, or services are not preempted. To the contrary, the ADA's exclusion of the FAAAA safety exception at the heart of Montgomery's question presented proves the opposite.

3. Montgomery also contends that "[t]his Court's precedent" suggests that safety-related claims aren't preempted by the ADA. Br. 48-49. That's wrong, too. Montgomery relies on a footnote in *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 231 n.7 (1995), noting that American Airlines and the United States did not think that the ADA would preempt most personal injury claims. But the Court did not suggest, much less hold, that safety-related tort claims are categorically excluded from ADA preemption even when they relate to prices, routes, or services. It may be unlikely that a personal injury claim about, for example, being injured by a flight attendant relates to prices, routes, or

services, but that doesn't make it categorically impossible. Montgomery also relies on the Third Circuit's 1998 decision in *Taj Mahal*, which predicted that the Court would not find that the ADA can preempt common law claims. 164 F.3d at 192. The Court's holding in *Northwest* made that prediction wrong. *See* 572 U.S. at 281-82.

Ultimately, Montgomery's claims are covered by § 14501(c)(1) because, at a minimum, they directly reference a broker's services. Section 14501(c)(1) itself doesn't contain a safety exception. So Montgomery's claims can only survive if, having fallen within § 14501(c)(1)'s general preemptive scope, he satisfies § 14501(c)(2)(A)'s actual safety exception.

II. Montgomery's claim may also be preempted by § 14501(c)(1) because it has an impermissible connection to and significant impact on C.H. Robinson's services.

Montgomery's claim "quite obviously" relates to C.H. Robinson's services because it directly "reference[s]" those services. *Morales*, 504 U.S. at 388. The Court thus doesn't need to evaluate other potential reasons why the claim could be preempted by § 14501(c)(1). But given the confusion in the party briefing and the importance of these fundamental preemption principles for the airlines, A4A addresses the other paths to preemption under the FAAAA and ADA. In brief, the Court's precedents establish that even when safety-related tort claims do not directly reference prices, routes, or services, they can still be subject to the ADA's and FAAAA's preemption provisions if they have "a connection with" a carrier's prices, routes, or services," or otherwise have "a 'significant impact' related to Congress' deregulatory and

pre-emption-related objectives." *Rowe*, 552 U.S. at 370-71 (emphasis omitted). These two related paths to preemption reflect the "deliberately expansive" approach Congress took in § 41713(b)(1). Indeed, the two paths often converge, as where state law is preempted because it "would have a significant impact upon the airlines' ability to market their product, and hence a significant impact upon the fares they charge." *Morales*, 504 U.S. at 390. The related and reinforcing connection and significant impact tests may furnish yet more reasons that Montgomery's claim is subject to § 14501(c)(1).

A. Start with the connection test. A plaintiff's claims have "an impermissible connection" with prices, routes, or services if (1) they seek to "govern[]" or "interfere with" the carrier's prices, routes, or services; or (2) "'acute, albeit indirect, economic effects' of the state law" would "force" the carrier "to adopt a certain scheme … or effectively restrict its" competitive "choice[s]." *Gobeille*, 577 U.S. at 320.

For example, in *Northwest*, the plaintiff asserted that an airline breached the implied covenant of good faith and fair dealing by terminating his access to the airline's frequent flyer program, and sought reinstatement. 572 U.S. at 284. The Court held that the plaintiff's claim "clearly ha[d] … a connection … to the airline's 'rates' because the [frequent flyer] program award[ed] mileage credits that c[ould] be redeemed for tickets and upgrades." *Id.* The claim was also "clearly … connected to" the airline's "services" because the frequent flyer program allowed participants "access to flights and to higher service categories." *Id.* Because the point of the claim was to force the airline to charge the plaintiff prices and give him services the

airline wished to withhold, the claim was covered by the ADA. *Id.* at 285.

B. The ADA and FAAAA also preempt claims that would have a significant adverse impact on Congress' efforts to deregulate the Nation's transportation industries. Congress enacted the ADA and FAAAA to promote "maximum reliance on competitive market forces" and to ensure "that the States would not undo federal deregulation with regulation of their own." *Morales*, 504 U.S. at 378; *Rowe*, 552 U.S. at 367-68. The ADA and FAAAA thus don't preempt only laws that reference or have a connection with airline prices, routes, or services. They also preempt "at least" any state law claims that would "have a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives" by imposing state regulation on federally regulated conduct, "even if a state law's effect on rates, routes, or services 'is only indirect.'" *Rowe*, 552 U.S. at 370-71.

For example, in *Rowe*, trade associations for air and motor carriers challenged a Maine statute that prohibited "licensed tobacco retailers" from "employ[ing] a 'delivery service' unless that service follow[ed] particular delivery procedures." *Id.* at 371. The Court held that the statute had a "'significant' and adverse 'impact' in respect to the [FAAAA's] ability to achieve its pre-emption-related objectives" and was thus preempted. *Id.* at 371-72. The Court explained that the Maine law "require[d] carriers to offer a system of services that the market d[id] not [then] provide (and which the carriers … prefer[ed] not to offer)," and also "fr[oze] into place services that carriers might prefer to discontinue in the future." *Id.* at 372. "The Maine law thereby produce[d] the very effect that the federal law sought to avoid, namely, a State's

direct substitution of its own governmental commands for 'competitive market forces' in determining (to a significant degree) the services that motor carriers will provide." *Id.*

The courts of appeals have similarly held that state statutes and common law claims that would effectively substitute state law principles for market forces in determining a carrier's prices, routes, or services are preempted under the significant impact test. For example, in *Schwann v. FedEx Ground Package System, Inc.*, 813 F.3d 429, 432 (1st Cir. 2016), delivery drivers handling initial pickup and the last legs of certain deliveries for FedEx argued that FedEx should have paid them as employees—rather than independent contracts—under a Massachusetts law classifying contractors as employees if they were in the same line of business as the hirer. The First Circuit held that the FAAAA preempted the Massachusetts statute. The court reasoned that applying Massachusetts' employee-classification law to FedEx would "have a significant impact" on Congress' deregulatory objectives because it would effectively deprive FedEx of the choice of "providing for first-and-last mile pick-up and delivery services through an independent person who bears the economic risk associated with any inefficiencies in performance," and thus "a court, rather than the market participant, would ultimately determine what services that company provides and how it chooses to provide them." *Id.* at 438-39.

Or take *Witty*, 366 F.3d at 382, where the plaintiff developed deep vein thrombosis during a flight and alleged that the airline was negligent for failing to offer more leg room. The Fifth Circuit held that the plaintiff's tort claims were preempted under the significant impact test. "Since requiring more leg room would

necessarily reduce the number of seats on the aircraft," the court reasoned, the plaintiff's claim would use state law to increase the price of each seat, thereby thwarting Congress' deregulatory objectives. *Id.* at 383.

The Seventh Circuit in *United Airlines, Inc. v. Mesa Airlines, Inc.*, 219 F.3d 605, 606-07 (7th Cir. 2000) (Easterbrook, J.), likewise found state law claims preempted where they would have had a significant adverse impact. There, the plaintiff alleged that a commuter carrier tortiously interfered with its subsidiary's contract with United Airlines when United chose the commuter carrier to assume the subsidiary's routes. *Id.* The Seventh Circuit held that the plaintiff's tort claim was preempted. The court explained that allowing the claims to proceed would have significant impact on the commuter carrier's routes because the commuter would have been required to decline the opportunity to fly additional routes with United to comply with the plaintiff's articulation of state tort principles. *Id.* at 610-11.

C. Montgomery's claims are arguably subject to § 14501(c)(1) under the connection and significant impact tests. As Respondents persuasively argue (Br. 15-17), Montgomery's claims attempt to impose liability for C.H. Robinson's selection of a carrier, meaning they have an "obvious" connection to a broker's core service. Moreover, allowing Montgomery's claim would arguably have a significant adverse impact on Congress' deregulatory objectives because the claim seeks to use state law rather than competitive market forces to determine whether C.H. Robinson selects a carrier with a checkered safety record. *Rowe*, 552 U.S. at 370-72. But again, because Montgomery's claims directly reference Respondents' services, the

Court need not apply the connection or significant impact tests to determine that the claim relates to a broker's services with respect to property transit for purposes of § 14501(c)(1). In all events, Montgomery is trying to build the plane while flying it. There's no question that his claim falls within § 14501(c)(1)'s preemptive scope, and the Court should not entertain his invitation to deviate from the clear flight path its decisions have charted.

CONCLUSION

The Court should apply firmly established ADA and FAAAA preemption principles and hold, ruling for Respondents, that Montgomery's claims relate to the services of a broker for purposes of 49 U.S.C. § 14501(c)(1). Contrary to Montgomery's argument, this case turns on whether the safety exception in § 14501(c)(2)(A) applies, and not whether Montgomery's claims are subject to the FAAAA's preemption provision in the first place. A4A does not address that question, because the ADA does not contain an analogous exception.

Respectfully submitted.

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