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 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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

The briefs of respondent and the United States substantially narrow and simplify the issues here. The Federal Aviation Administration Authorization Act ("FAAAA") makes clear that it does not preempt a state's exercise of its "safety regulatory authority … with respect to motor vehicles." 49 U.S.C. §14501(c)(2)(A). Respondent does not contest, and the United States concedes, that a negligent-hiring tort claim is an exercise of state safety regulatory authority. Thus, the safety exception applies so long as a negligent-hiring claim seeking recovery for injuries sustained in a motor vehicle collision is a claim "with respect to motor vehicles." Of course it is. Indeed, respondent and the United States can suggest otherwise only by adding words—like "direct link" or "direct connection"—to the statutory text. This Court has repeatedly rejected comparable efforts to augment plain text, and it would be particularly inappropriate to add words to artificially narrow an exception designed to preserve state authority over safety. Indeed, the safety exception is broadly worded precisely because a Congress that favored *economic* deregulation had zero interest in *safety* deregulation.

The balance of respondent's arguments are elaborate efforts to draw subtle inferences from inapposite provisions or to abandon the question presented altogether and raise implied preemption arguments instead. The United States eschews most of those efforts for good reasons: the arguments are misplaced and contradict everything the United States told this Court when its views were solicited four years ago. *See* U.S.Br., *C.H. Robinson*

Worldwide, Inc. v. Miller, No. 20-1425 (May 24, 2022) ("*Miller*.U.S.Br."). To be sure, on the critical question whether the negligent-hiring claims at issue in *Miller* and here are "with respect to motor vehicles," the United States has pulled an about-face, citing only "the change in Administration," unspecified "intra-governmental consultation and deliberation," and "further percolation of the issue in the courts of appeals." U.S.Br.4 n.*. In reality, the statutory text has not changed—"with respect to motor vehicles" remains the same broad phrase the United States viewed as covering negligent-hiring claims against brokers and carriers alike—and a principal byproduct of further percolation was a unanimous Sixth Circuit decision embracing the views set forth in the government's *Miller* brief. *See Cox v. Total Quality Logistics, Inc.*, 142 F.4th 847, 856 (6th Cir. 2025). With respect, the United States got it right the first time: There is simply "no way to disentangle motor vehicles from [petitioner's] substantive claim." *Id.*

Finally, respondent and the United States have no plausible explanation for reading the preemption provision broadly enough to include the claims here but the safety exception so narrowly as to exclude them. If claims that a broker negligently hired an unsafe motor carrier and driver to provide motor vehicle transportation are claims "with respect to the transportation of property" under the preemption provision, they are plainly claims "with respect to motor vehicles" under the safety exception. The only transportation of property here was by motor carrier, and if anything, the preemption provision features the narrower phrase and needs greater clarity to displace state law. Either way, this Court should reverse.

ARGUMENT

I. The FAAAA Safety Exception Preserves Petitioner's Claims From Preemption.

A. The Statutory Text and History Make Clear That the Safety Exception Preserves Petitioner's Claims.

1. The safety exception excludes from FAAAA preemption any exercise of "the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. §14501(c)(2)(A). That provision imposes only two requirements—(1) an exercise of state "safety regulatory authority" (2) "with respect to motor vehicles"—and respondent does not dispute the first. Pet'r.Br.19-21; *see* U.S.Br.20-22 (affirmatively arguing that tort law generally and negligent-hiring claims in particular involve state "safety regulatory authority").

As to the second requirement, respondent and the United States cannot deny that the claims here are "with respect to motor vehicles" without adding non-existent words (like "direct") to the statute. That is hardly surprising, as "with respect to" is a term of substantial breadth, Pet'r.Br.21-22, and efforts to recover for motor vehicle accidents proximately caused by negligent hiring have everything to do with motor vehicles (and safety). Brokers are only able to assert FAAAA preemption because, by definition, they are in the business of "selling, providing, or arranging for, transportation by motor carrier"—i.e., by persons "providing motor vehicle transportation for compensation." 49 U.S.C. §13102(2), (14). When a state requires a broker to exercise due care in hiring a person to safely "provid[e] motor vehicle

transportation for compensation," *id.* §13102(14), it is necessarily exercising state safety regulatory authority "with respect to motor vehicles," *id.* §14501(c)(2)(A). That conclusion was obvious to the unanimous Sixth Circuit in *Cox*, and to the United States when it first considered the issue, *see Miller*.U.S.Br.16. *Cox* recognized that the gravamen of petitioner's claim is that respondent "failed to exercise reasonable care in selecting a safe motor carrier to operate a motor vehicle on the highway, resulting in a vehicular accident." *Cox*, 142 F.4th at 856. The United States concluded that "[a] state requirement that a broker exercise ordinary care in selecting a motor carrier to safely operate a motor vehicle when providing motor vehicle transportation on public roads is a requirement that concerns motor vehicles." *Miller*.U.S.Br.16. Ultimately, there is simply "no way to disentangle motor vehicles from [petitioner's] substantive claim." *Cox*, 142 F.4th at 856; *see* Pet'r.Br.22-23.

Respondent's principal—and the United States' sole—response to this straightforward analysis is to try to add a "direct connection" requirement that is totally absent from the statutory text. Resp.Br.9, 27; U.S.Br.3-4, 23. If Congress wanted to except only "state laws that directly regulated motor vehicles," it would have been easy enough to do so. But Congress wrote a much broader safety exception, without any language demanding a "direct connection" or "direct link" or otherwise suggesting an intent to except only a miserly range of safety regulations. Pet'r.Br.26-27. Indeed, consistent with its clear intent to achieve economic deregulation without safety deregulation, Congress employed purposely broad language in the

safety exception. Respondent invokes *Dan's City* to suggest that the phrase "with respect to" is "massively limit[ing]." Resp.Br.27-28. But "with respect to" is notoriously broad language that reaches any state claim that "involve[s]" or "concern[s]" motor vehicles, without any directness requirement. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261-62 (2013); *see Miller*.U.S.Br.16 ("with respect to" is "quite broad"). What did the massive limiting in *Dan's City* was "transportation of property," which excluded the use of motor vehicles for other purposes. Pet'r.Br.27 n.4; *Miller*.U.S.Br.16 n.4. The phrase "with respect to motor vehicles" is far broader (and in contrast to *Dan's City*, appears in an exception provision, where interpretive principles would err on the side of preserving state authority).

Respondent alone suggests that the word "regulatory" somehow implies that state safety regulatory authority must be "specifically directed toward" motor vehicles. Resp.Br.29. But as the United States explains, the statutory phrase "regulatory authority" is best understood as "simply a shorthand for the 'laws, regulations, or other provisions having the force and effect of law'" potentially subject to FAAAA preemption. U.S.Br.21. Again, it would have been easy enough to exempt only regulations "specifically directed toward" motor vehicles. Congress instead chose substantially broader language without a hint of a directness requirement.

Regardless, the dispute about directness is largely academic, because while nothing in §14501(c)(2)(A) imposes a directness requirement, state tort law does

in the form of a proximate-cause requirement. *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1127 (Ill. 2004). Thus, in order to prevail on a negligent-hiring claim, the plaintiff must show a direct link between the broker's negligence in selecting an unsafe motor carrier or driver and her injuries from a collision with a motor vehicle. Where that link can be shown, the purposefully broad language of the safety exception will ensure that federal law, which neither provides a substitute remedy nor embraces any policy of safety deregulation, is no obstacle to recovery.

Respondent offers another effort to rewrite the safety exception by suggesting that it should be limited to those who own or operate motor vehicles. Needless to say, Congress could have limited the safety exception in that fashion—for example, excepting state safety regulatory authority over owners and operators—but plainly did not. That was for good reason. Even respondent concedes that negligent-hiring claims against motor carriers come within the safety exception, Resp.Br.35, and a sizable percentage of motor carriers do not own or operate their own vehicles, *see* Owner-Operator Indep. Drivers Ass'n Found., *2022 Owner-Operator Member Profile Survey* 40 (May 23, 2022), *available at* https://tinyurl.com/mrww6mjv (finding that 45% of drivers lease their own trucks to motor carriers).

The United States expresses concern that negligent-hiring claims against brokers could impose liability on brokers for hiring a federally registered carrier. U.S.Br.14. But the position embraced by the United States would foreclose liability even for a

broker who selected an unregistered broker. Moreover, brokers often have more information about the safety risks posed by particular carriers and drivers than the federal government. That is particularly true for so-called "chameleon carriers" who amass terrible safety records only to re-register under a different corporate name. *See, e.g.*, *Miller v. Costco Wholesale Corp.*, 2022 WL 526140, at *2-4 (D. Nev. Feb. 22, 2022) (finding jury question as to whether broker knowingly hired a chameleon carrier, resulting in a motor vehicle collision rendering a 25-year-old man quadriplegic). There is no reason to give a free pass to a broker that puts a dangerous carrier or driver on the road in such circumstances.[1]

2. The statutory evolution underscores that the safety exception preserves petitioner's claims. Congress enacted the FAAAA as part of a program of economic deregulation of the Nation's transportation industries. The parallel preemption clauses in the ADA and FAAAA were designed to ensure that states did not fill the gap created by federal economic deregulation with new economic regulations of their own. *See* Pet'r.Br.4-8. But Congress had no interest in eliminating either federal or state safety regulation. Indeed, a spate of new safety problems would be the surest way to invite re-regulation. Thus, at the same

[1] Respondent's and the United States' concern with ensuring uniform regulation is misguided. *See, e.g.*, Resp.Br.21-22; U.S.Br.14. Congress sought uniform *economic* deregulation, but specifically *preserved* states' ability to set more stringent safety standards, knowing that would produce some state-to-state variation. 49 U.S.C. §14501(c)(2)(A); *see id.* §31136(a) (imposing only "minimum" federal safety standards, which states are free to exceed).

time Congress mothballed federal economic regulators like the ICC, Congress preserved and expanded federal safety regulation by different agencies. And at the state level, Congress explicitly preserved state safety regulatory authority. Pet'r.Br.8-10, 23-25; *see, e.g., Dan's City*, 569 U.S. at 256 (recognizing the FAAAA "exempts … from its preemptive scope" all "state laws regulating motor vehicle safety").

Respondent concedes that the FAAAA preemption provision "targets economic regulation" while the safety exception "protects the states' preexisting authority to regulate motor vehicle safety." Resp.Br.33. That concession essentially gives away the game, as negligent-hiring claims have always been about safety, as 29 states and the District of Columbia underscore as amici. Ohio.Br.14 (negligent-selection claims against brokers "aim[] to protect the motoring public from unfit truckers" by preventing brokers from putting them "in charge of transporting heavy commercial loads"). Going back to the First Restatement, the crux of the negligent-hiring tort has been safety, imposing liability on those responsible for putting unsafe vehicles and drivers on the roads. While that has some incidental effect on economic decisionmaking, that is both a far cry from regulating prices, routes, and services and how tort law works. *See* Preemption Scholars Br.10-14. Respondent itself goes out of its way to make clear that carriers remain liable for negligently selecting drivers, even though that has some incidental (and beneficial) impact on their economic decisionmaking. Indeed, a Congress that wanted to deregulate prices, routes, and services but leave federal and state safety laws in place affirmatively wanted carriers to internalize the costs

of negligently putting unsafe drivers and vehicles on the road. That is no less true of brokers, who would otherwise have every incentive to boost their margins by selecting the lowest-cost carriers and drivers without regard to their safety records. *See* Am. Truckers United Br.8-18.

B. Respondent's Other Attempts to Narrow the Safety Exception Are Unpersuasive.

1. Respondent contends that a broad reading of the safety exception would "render other parts of [§14501(c)(2)(A)] superfluous," pointing to the separate statutory exceptions for highway route controls and financial-responsibility requirements. Resp.29-30. The Seventh Circuit declined to adopt that reasoning, *see Ye v. GlobalTranz Enters., Inc.*, 74 F.4th 453, 464 (7th Cir. 2023), and for good reason: route controls and financial-responsibility requirements are distinct state-law requirements that sometimes have nothing to do with safety, and so there is no superfluity in preserving state authority to regulate all three. Pet'r.Br.36-37; *see Cox*, 142 F.4th at 858 n.8. While there may be overlap, such that a standalone safety exception might preserve some route controls and financial-responsibility requirements, that only underscores that Congress legislated broadly to preserve state authority that did not undermine economic deregulation.

Respondent briefly contends that reading the safety exception in accordance with its plain text would cause "the exception [to] swallow the rule," because all broker regulation "with respect to the transportation of property" will be "connected, at least indirectly, to motor vehicles," and so "every such law

would be preempted and saved." Resp.Br.36-37. But the short answer is that much regulation of "prices, routes, and services" has nothing to do with safety, such that numerous state laws could be preempted by 49 U.S.C. §14501(c)(1) without being excepted by §14501(c)(2)(A). State laws concerning labor and employment, customer privacy, and unfair business practices (to name just a few) may well relate to prices, routes, and services, but are not "genuinely responsive to safety concerns" and so are not covered by the safety exception. *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 442 (2002).

The United States makes a related superfluity argument, asserting that a broad reading of "with respect to motor vehicles" would make that phrase superfluous because all state laws "related to a price, route, or service" of carriers and brokers would be "with respect to motor vehicles," and so Congress could have simply excepted all state "safety regulatory authority." U.S.Br.23-25. The Seventh Circuit declined to embrace that argument as well, *see Ye*, 74 F.4th at 464, and again for good reason, as laws regulating ancillary services (such as "packing," "storage," "ventilation," and "refrigeration") or non-motor-vehicle forms of transportation (such as by boats) could fall within the FAAAA preemption provision but not be "with respect to motor vehicles," Pet'r.Br.35-36. Regardless, "[t]he canon against surplusage is not an absolute rule," *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013), and is a particularly weak guide to interpreting an exception or savings clause, where Congress' overriding goal is to preserve certain claims. Here, the goal was to broadly preserve state safety regulation, which still

leaves plenty of work for the preemption clause to do with respect to regulations of price, routes and services, most of which have nothing to do with safety. Put simply, Congress wanted a broad safety exception, and in crafting that provision it was rightly more concerned with clearly preserving state safety laws than with doing so in the fewest possible words.

Respondent next makes a strained *noscitur a sociis* argument, divining "two common features" in the other §14501(c)(2)(A) exceptions and then seeking to impose those perceived commonalities to limit the safety exception. That is an elaborate effort to conjure statutory text rather than interpret it. It is unavailing in all events. The two perceived commonalities are that they (1) address "powers that federal law recognized as belonging to the states when the FAAAA was enacted," and (2) are "directed at motor carriers and operators," not brokers. Resp.Br.30-32. The first purported commonality aptly describes petitioner's negligent-hiring claims, which were an established component of state power when the FAAAA became law, dating back to the First Restatement. Pet'r.Br.39. As to the second, route controls are not peculiarly "directed at motor carriers and operators," *contra* Resp.Br.31-32, as *brokers* often handle route planning. *See, e.g.*, *Heavy Haul*, Total Quality Logistics, https://perma.cc/DHL4-BGMH (last accessed Jan. 28, 2026) (broker "manages all aspects of transportation on your behalf, including … route planning"). In reality, this whole misguided effort just underscores that the best way to interpret the scope of the safety exception is to focus on its text, not attempt to identify common threads in surrounding provisions addressing different issues with different language.

Respondent emphasizes the absence of the word "brokers" in the safety exception, claiming that it "reflects Congress's judgment that a *broker's* role with respect to the transportation of property does not concern or involve motor vehicle safety." Resp.Br.34; *see Ye*, 74 F.4th 461. But the safety exception does not specifically mention *any* regulated parties, including carriers, who even respondent concedes are squarely covered by the safety exception. The same is true of most of the exceptions which except categories of state authority, not particular actors enumerated in §14501(c)(1). The one counterexample—the exception for financial-responsibility regulations for motor carriers—underscores that when Congress wants to single out a subset of regulated entities for distinct treatment, it knows how to do so.

2. Respondent next turns to an inapposite provision, §14501(b), that treats brokers (and freight forwarders) differently when it comes to intrastate rates, routes, or services. Resp.Br.37-38, 41-43; U.S.Br.25-26. But other than illustrating that Congress knows how to single out brokers for different treatment and declined to do so in the safety exception, that provision is irrelevant. Respondent emphasizes that in preempting state regulation of brokers and freight forwarders when it comes to intrastate transportation, Congress did not include a safety exception. That provision was added a year after the FAAAA, in the ICC Termination Act of 1995, and it did not purport to alter the safety exception. The provision is concededly inapplicable here, as this case involves interstate transportation and the only arguably applicable preemption provision is §14501(c), which plainly does have a safety exception.

While respondent finds it anomalous that the safety exception would not apply to a broker that negligently arranged for intrastate transportation, that anomaly could be eliminated by holding §14501(b)'s preemption provision (like the ADA's preemption provision) inapplicable to personal injury claims. If not, the perceived policy anomaly would be explained by clear differences in statutory text.

The more relevant subsection of §14501 is §14501(a), which covers motor carriers of passengers and includes (in parallel language) a safety exception. Claims for negligently hiring an unsafe motor carrier or driver (in both the passenger and property context) have been recognized for decades, and Congress was careful to ensure that its economic deregulation of the transportation industry would not disturb those pre-existing claims in both contexts. Pet'r.Br.32-33; *see* Restatement (First) of Torts §411 cmt.b, illus.2 (1934) (passengers); *id.* cmt.d, illus.4 (property). If one who endangers passengers and innocent motorists by negligently arranging passenger service remains liable, there is no reason to let brokers off the hook.[2]

Straying farther afield, respondent claims that "where Congress regulates motor vehicle safety in

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[2] Respondent claims that these early examples of negligent-hiring claims "bear[] little similarity to the work of modern transportation brokers." Resp.Br.44. But the basic principle that states can (and do) regulate motor vehicle safety by imposing liability on those who negligently put unsafe drivers or carriers in a position to cause great harm has been long settled. There is no reason to think a Congress that included two parallel safety exceptions wanted to eliminate this liability or artificially limit it to those who own or operate the motor vehicles for either passenger or property transportation.

Title 49, it does not address broker services." Resp.Br.38; *see* Resp.Br.38-39. That is incorrect and ultimately irrelevant. In fact, Congress addressed brokers and safety in Title 49 by empowering the Transportation Secretary to "prescribe regulations on commercial motor vehicle safety" that ensure no "transportation intermediary" (a.k.a., broker) coerces any driver "to operate a commercial motor vehicle in violation of a regulation promulgated under this section." 49 U.S.C. §31136(a)(5). Respondent suggests that authority applies only when brokers "operate outside of their role," Resp.Br.45, but it underscores that Title 49 regulates brokers to ensure that they perform their role in a manner that does not endanger safety on the roads. One way for brokers to transgress is to coerce drivers to operate unsafely; another way to transgress is to negligently hire carriers or drivers that pose undue safety risks that materialize in a collision.

Regardless, respondent's search through Title 49 for other statutes where Congress has imposed federal safety regulations on brokers with respect to motor vehicles is misguided. In enacting economic deregulation, Congress deliberately preserved *both federal and state* safety regulatory authority without suggesting that they were or needed to be co-extensive. *See* 49 U.S.C. §31136(a) (setting federal "minimum safety standards," which states are free to supplement). Federal safety regulation has never covered the waterfront, let alone provided compensation for those harmed by the negligence of federally regulated actors. The latter has always been the office of state tort law, and brokers (and all arrangers of transportation by others) have never

been exempt from that state safety- and compensation-promoting regime. Nothing in §14501(c) signals any intent to displace either federal or state safety regulation and replace it with nothing. To the contrary, §14501(c)(2)(A) expressly preserves state authority.

Respondent emphasizes that motor carriers and brokers have different financial-responsibility requirements, and argues that those financial responsibility requirements show that Congress "did not intend for brokers to be held liable for personal injury claims." Resp.Br.39; *see Ye*, 74 F.4th at 463; Resp.Br.39-41, 45-46; U.S.Br.26-27. That attempts to glean far too much from far too little. At most, the differential financial-responsibility requirements demonstrate that the principal financial risks faced by motor carriers and brokers differ. That is true, but irrelevant. Proximate causation requirements make it harder to sue a broker for a collision than a motor carrier, and motor carriers do not pose the same nonpayment default risks as brokers. It thus makes perfect sense that Congress imposed different financial-responsibility requirements addressing the different principal financial risks faced by different players. But that does not remotely suggest that carriers cannot default or brokers cannot face personal injury suits. More to the point, these financial-responsibility requirements say almost nothing about the scope of the FAAAA's preemption clause and safety exception, which not only were enacted a year earlier, but directly address the scope of preemption. To draw an inference that Congress preempted all liability that it did not affirmatively require regulated parties to insure against is unfathomable. No case

from this Court has ever found preemption based on so thin a reed.

3. Respondent and the government have no choice but to concede that the safety exception preserves negligent hiring claims against motor carriers. Such claims are unmistakably an exercise of the state's safety regulatory authority "with respect to motor vehicles." But respondent never offers a coherent theory for why negligent hiring claims against brokers are any different. The text of the safety exception does not carve brokers out or treat them differently. Respondent's efforts to point to other provisions treating carriers and brokers differently—whether for intrastate transport or financial responsibility—just underscore that Congress knows how to carve out brokers (or other regulated parties) when it wants to. And nothing in the FAAAA preemption clause itself—which addresses both carriers and brokers—provides any basis for allowing safety-related torts to go forward against carriers but not brokers.

Worse still, respondent's repeated pleas for special treatment for brokers would create a bizarre patchwork and perverse incentives. Respondent concedes that carriers are liable for negligent hiring of drivers. And if a shipper contracts directly with a fly-by-night or even unregistered carrier, nothing in the FAAAA suggests that any negligent hiring claims against the shipper would be preempted by the FAAAA, as shippers are not among those mentioned in §14501(c)(1). Thus, in respondent's gerrymandered scheme, brokers—and brokers alone—are immune from negligent-hiring claims. That nonsensical result would create a massive artificial incentive for shippers

to employ brokers (or take the undemanding steps and pay the modest fee to register as brokers themselves). That may be a profitable windfall for brokers, but it cannot be what Congress intended in drafting a broad safety exception that says not one word about treating brokers differently.[3]

C. Respondent's Alternative Arguments Are Neither Properly Before the Court nor Meritorious.

Apparently recognizing the weakness of its primary position, respondent advances two alternative arguments—neither of which the Seventh Circuit adopted or implicates any circuit split, and neither of which the United States joins in deference to this Court's role as a court of review, not first view, *see* U.S.Br.29. Both alternative arguments are meritless.

1. Respondent first asserts that the safety exception excludes from preemption only "preexisting" state safety regulatory authority, and that states had no "authority to subject brokers to tort liability for personal injury" when the safety exception was enacted. Resp.Br.46-48. But like respondent's "direct link" argument, that contention requires inserting words into the statute that are not there. In fact, the argument fails twice over. First, the major premise is wrong; the safety exception is not limited to

[3] On top of all that, respondent concedes that petitioner alleges respondent hired not only the motor carrier but also the driver here, meaning that petitioners' claims fall within the safety exception even on respondent's view. Resp.Br.16 n.5; *see* Pet.App.6a (recognizing that respondent "could request that a different driver transport a load").

"preexisting" state regulatory authority, *contra* Resp.Br.46, and provides instead that the FAAAA preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles," 49 U.S.C. §14501(c)(2)(A), regardless of whether that state safety regulatory authority was exercised before the safety exception was enacted. Congress knows how to freeze state law or grandfather pre-existing state law, and it did neither in §14501(c)(2)(A).

Respondent's minor premise is equally flawed, as state authority to impose liability on those who negligently hire unsafe transportation providers was literally hornbook law for decades before the safety exception, and the "overwhelming majority of states have adopted a version of this tort." Ohio.Br.14-15; *see* Restatement (First) of Torts §411 cmt.b, illus.2, cmt.d, illus.4; Pet'r.Br.39 (citing cases); Truck Safety Coal. Br.20-22. Unsurprisingly, respondent cites no authority whatsoever for its theory that federal regulation of brokers at the time of the FAAAA's enactment somehow occupied the field to the exclusion of state tort law generally or negligent-hiring claims in particular.[4] In reality, brokers have been obliged under state law to exercise reasonable care to avoid hiring unsafe motor carriers since the time of the First

[4] Respondent repeatedly cites an ICC ruling from the 1980s promulgating guidelines that permit brokers "to file other evidence of security as an alternative to filing a surety bond." *Property Broker Security for the Protection of the Public 49 C.F.R. Part 1043*, 3 I.C.C.2d 916, 916 (I.C.C. July 10, 1987). Nothing in that ruling comes anywhere near holding that states "have never had the power to subject brokers to tort liability for personal injury." *Contra* Resp.Br.48.

Restatement. Those long-settled duties fall well within the "traditional state police power over safety" that the safety exception excludes from preemption. *Ours Garage*, 536 U.S. at 439.

2. Respondent alternatively raises an implied preemption argument based on *Castle v. Hayes Freight Lines*, 348 U.S. 61 (1954), and the theory that state negligent-hiring claims "interfere with federal licensing of motor carriers." Resp.Br.48. That is plainly incorrect and well outside the question presented, which focuses on the preemptive effect of §14501(c).

In *Castle*, this Court held that a state law that suspended a "carrier's right to use Illinois state highways" conflicted with the ICC's determination that the same motor carrier could operate on those highways, and so was implicitly preempted. 348 U.S. at 62-64. *Castle* pre-dated the FAAAA and its safety exception by decades, and any theory of implied preemption is no match for the express statutory text of the safety exception. Regardless, *Castle* simply establishes that state law cannot revoke or limit a motor carrier's federal authorization to operate. But that does not remotely suggest that the federal registration program for motor carriers implicitly precludes states from imposing tort liability for unsafe motor vehicle transportation undertaken by a federally registered carrier—a rule that would preclude not only negligent hiring claims against brokers, but negligence claims against motor carriers themselves as well. *Contra* Resp.Br.48-49.

That approach would make zero sense, especially given the federal registration program's minimal

requirements (and non-existent compensation). *See* Inst. for Safer Trucking Br.7-8 (explaining that brokers need only pay a nominal fee and complete a registration application to operate). The federal government tellingly does not endorse respondent's assertion that the federal registration program implicitly preempts state tort law. *See* U.S.Br.29. And despite respondent's dire warnings that allowing petitioner's claims to proceed will undermine motor carriers and their "federally granted right to operate," Resp.Br.20, the only motor-carrier amici in this case support *petitioner*—underscoring that negligent-hiring claims against brokers serve the trucking industry as a whole, by avoiding a regime where brokers have every incentive to prioritize maximizing their profit margins rather than selecting safe carriers. *See* Am. Truckers United Br.8-18.[5]

II. If The Safety Exception Does Not Apply, The FAAAA Preemption Provision Does Not Apply Either.

Because the safety exception expressly preserves petitioner's negligent-selection claims from preemption, this Court need not decide whether the FAAAA preemption provision applies to those claims. But if this Court reaches the issue, it should firmly

[5] The government notes that there are other forms of federal motor vehicle safety regulation, suggesting that negligent-hiring claims against brokers are unnecessary to ensure motor vehicle safety. U.S.Br.30-32. But none of those programs promises injured motorists any compensation. Worse still, the government's reading of the safety exception would foreclose a negligent-hiring claim based on hiring an *unregistered* carrier, or where the carrier's notorious violation of federal safety rules provides powerful evidence of the broker's negligence.

reject respondent's strained attempt to read the FAAAA preemption provision broadly and then turn around and read the safety exception narrowly. Both provisions must be read fairly, *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88-89 (2018), and any interpretive thumb should be placed in favor of preserving state authority. Respondent's invitation to read the FAAAA's preemption clause broadly (far more broadly than the ADA's comparable provision) and the safety exception miserly should be declined. Pet'r.Br.43-50.

Respondent does not dispute that if petitioner's claims qualify as a "law, regulation, or other provision having the force and effect of law" under the preemption provision, then they equally qualify as an exercise of "safety regulatory authority" under the safety exception. Pet'r.Br.44-45. That leaves only the question of whether petitioner's claims can be "related to a price, route, or service … with respect to the transportation of property" under the preemption provision, but not be "with respect to motor vehicles" under the safety exception. Pet'r.Br.44-46. They plainly cannot.

First, the only close question is whether petitioner's claims are "related to a price, route, or service" of motor carriers or brokers "with respect to the transportation of property." Pet'r.Br.46-49. Respondent insists that petitioner's claims are necessarily related to broker services (and motor carrier services) because they impose liability on brokers for hiring unsafe motor carriers. Resp.Br.15-21; *see* U.S.Br.13-15. But petitioner's claims are not the kind of economic regulation of prices, routes, and

services in the transportation industry that Congress deliberately eliminated at the federal level and then precluded states from reimposing at the state level, *see* Pet'r.Br.4-10; instead, they are safety-oriented claims that simply require brokers to abide by the same duty of reasonable care that applies to everyone else who selects carriers or drivers for the sensitive tasks of transporting passengers and property using motor vehicles that can cause great injury and havoc on the roads. *See* Pet'r.Br.46. That is the basic reason why courts applying the ADA's parallel preemption provision—which Congress "copied" in enacting the FAAAA preemption provision, *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008)—have uniformly concluded that it does not preempt state safety-related tort claims for personal injuries caused by negligent airline operations. Pet'r.Br.47-48. Both this Court and the government have endorsed the same view, *see Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 231 n.7 (1995) (citing with apparent approval the federal government's position that it is "unlikely that [the ADA] preempts safety-related personal-injury claims relating to airline operations"); *Miller*.U.S.Br.7 n.1 (ADA "likely does not preempt safety-related tort claims for personal injuries related to airline operations").

Respondent says this Court should ignore the ADA cases by reviving its fixation with insurance-coverage requirements rather than the text of preemption provisions. To be sure, Congress "requires air carriers to maintain personal injury insurance." Resp.Br.24-25. But that just underscores that Congress understood that the ADA preemption provision did not relieve airlines of liability for those

claims despite the absence of a safety exception. There is no doubt that the text of the ADA and FAAAA preemption provisions are materially identical, so the same text should have the same meaning here. And contrary to respondent's suggestion, the numerous appellate decisions (and earlier government amicus briefs) concluding that the ADA does not preempt safety-related personal-injury claims did not turn exclusively on the ADA's financial-responsibility provisions, which merely confirm what the directly relevant text of the preemption provision provides. *See, e.g.*, *Day v. SkyWest Airlines*, 45 F.4th 1181, 1182, 1187 (10th Cir. 2022) ("[P]ersonal-injury claims arising out of an airline employee's failure to exercise due care are not 'related to' a deregulated price, route, or service."); *accord Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 335, 338 (5th Cir. 1995) (en banc); *Miller*.U.S.Br.7 n.1; *see also* Pet'r.Br.47-48 (citing cases).

For its part, the government claims that the ADA cases "generally" have involved "peripheral elements of airline operations," such as "the improper storage of luggage." U.S.Br.15-16. But the government's line between "core" and "peripheral" airline operations appears nowhere in the statutory text and makes no sense. *Contra* U.S.Br.15-16. More to the point, the reason that the ADA preemption provision did not reach safety-related torts is that the earlier regime of federal economic regulation left those issues to state tort law. When Congress moved toward economic deregulation of the airlines, it wanted to prevent states from filling the newly created vacuum in federal economic regulation with state-level economic regulation, but it had no interest in displacing states

from their longstanding role in promoting safety regulation. The same is true of the FAAAA, except that Congress made its intent crystal clear by including a safety exception. Using that explicit safety exception to narrow the reach of the ADA and FAAAA's shared preemption provision would be beyond perverse. It would punish Congress for making its intent to preserve state safety regulation explicit in the enacted text.

Clinging to its broad-for-me-but-narrow-for-thee approach, respondent contends that petitioner's claims are "with respect to the transportation of property" under the preemption provision but not "with respect to motor vehicles" under the safety exception. Resp.Br.35-36; *see* U.S.Br.27-28. That position is unsustainable on its face. The only "transportation of property" that is at issue in this case is transportation of property by motor vehicle. *See* Pet'r.Br.11-12 (describing the motor vehicle collision that injured petitioner). If petitioner's claims represent state regulation "with respect to the transportation of property," they necessarily represent state regulation "with respect to motor vehicles" as well. Pet'r.Br.50-51.[6] In short, petitioner's claims are either covered by the safety exception or outside the scope of the FAAAA preemption provision. Either way, the judgment below cannot stand.

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[6] The government notes that the statute defines "transportation" to include "arranging for" the movement of passengers or property. U.S.Br.27. But the only kind of transportation that respondent arranged here was motor vehicle transportation.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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