No. 25-145

In the Supreme Court of the United States

TOTAL QUALITY LOGISTICS, LLC, PETITIONER

v.

ROBERT COX

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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Respondent agrees with the central premise of the petition: the courts of appeals are intractably divided over whether the safety exception in 49 U.S.C. 14501(c)(2)(A) applies to a common-law negligent-selection claim against a freight broker. Four courts of appeals have now split evenly on that question. That recognized and entrenched circuit conflict disrupts one of the Nation's most vital industries and creates intolerable uncertainty for freight brokers, carriers, shippers, and the purchasing public.

Respondent also does not dispute that the question presented is exceedingly important or that this case is an optimal vehicle for answering it. Instead, respondent's principal response is to ask this Court to stay its hand because, in siding with the Ninth Circuit, the Sixth Circuit was the first court of appeals to reject the reasoning of the

intervening decisions from the Seventh and Eleventh Circuits. That is exactly backwards: the fact that the Sixth Circuit considered both sides of the conflict and adopted the minority position simply confirms that the conflict has now become firmly entrenched.

Respondent's suggestion that the conflict may nevertheless resolve itself in light of the Sixth Circuit's analysis is farfetched. The Seventh and Eleventh Circuits had the benefit of full briefing and thoughtful advocacy when they split from the Ninth Circuit. They did not misunderstand the statute or overlook the plaintiffs' arguments; they simply reached a different conclusion about what the safety exception covers. And because both courts have expressly declined requests to reconsider their decisions in recent years, there is no reason to think that the Sixth Circuit's decision will resolve the fundamental interpretive disagreement.

Nor can respondent salvage the Sixth Circuit's position on the merits. In the decision below, the Sixth Circuit erroneously concluded that claims against freight brokers that never touch a motor vehicle are nonetheless "with respect to motor vehicles," and it wrongly equated general common-law duties of freight brokers with state "safety regulatory authority." That reasoning upends the careful balance that Congress struck in the FAAAA between federal deregulation and state safety regulation. Because it is undisputed that this case presents an ideal vehicle for resolving an acknowledged circuit conflict on an important question of federal law, the petition for a writ of certiorari should be granted.

A. The Decision Below Deepens A Conflict Among The Courts Of Appeals

1. Respondent agrees (Br. in Opp. 5) that there is a clear circuit conflict on the question presented. The Seventh and Eleventh Circuits have held that the safety exception in Section 14501(c)(2)(A) does not apply to negligent-selection claims against freight brokers; the Sixth Circuit (in the decision below) and the Ninth Circuit have reached the opposite conclusion. See Pet. 10-17; Br. in Opp. 5-9. And there is no reason to think that the conflict will resolve on its own. Both the Seventh and Eleventh Circuits have declined requests to reconsider their precedents on the question presented; the Ninth Circuit has not reconsidered its precedent over the past five years; and the Sixth Circuit consciously chose to "diverge" from the Seventh and Eleventh Circuits in the decision below. See Pet. 14-15, 24. That entrenched conflict warrants the Court's review.

2. Respondent nonetheless urges the Court to deny review and allow the issue to "percolate further." Br. in Opp. 9. It is hard to see what additional percolation would accomplish. The four circuits to have addressed the question presented have issued detailed opinions analyzing the statutory text and context, this Court's precedents, and the FAAAA's broader purposes. See Pet. 10-15; Pet. App. 1a-21a. Each court has deliberately staked out its position.

Respondent identifies two merits arguments that he suggests are new to the Sixth Circuit's opinion and might persuade the Seventh and Eleventh Circuits to reconsider their existing precedents. But both the Seventh and Eleventh Circuits have considered and rejected those very arguments.

Respondent first argues (Br. in Opp. 7-8) that the Seventh Circuit in *Ye* v. *GlobalTranz Enterprises, Inc.*, 74

F.4th 453 (2023), cert. denied, 144 S. Ct. 564 (2024), erroneously relied on the fact that the safety exception does not expressly mention brokers and that the court might reconsider its decision after the Sixth Circuit's contrary explanation that the safety exception does not mention "*any* regulated persons or entities * * * listed in the preemption provision." Pet. App. 17a. But that reasoning in *Ye* was a considered choice. The briefs in the Seventh Circuit debated precisely the same issue, and the plaintiff in *Ye* (represented by the same counsel as respondent here) made exactly the argument that the Sixth Circuit endorsed in the decision below. See Br. of Appellee at 32-33, *Ye*, *supra* (No. 22-1805); Reply Br. at 4-5, *Ye*, *supra*.

Respondent also notes (Br. in Opp. 8) the Sixth Circuit's conclusion that a state law can fall within the safety exception even if it does not regulate an entity that owns or operates motor vehicles, because the safety exception purportedly "focuses on the connection between the state law and motor vehicles, and not necessarily on the connection between the regulated entity and motor vehicles." Pet. App. 19a. But again, the same point was raised before the Seventh and Eleventh Circuits, where the plaintiffs argued that "[t]he relevant inquiry under the safety exception is not about the relationship between the regulated entity and motor vehicles, but the relationship between the safety regulatory authority and motor vehicles." Reply Br. at 13, *Ye*, *supra* (emphases omitted); see Reply Br. at 9-10, *Gauthier* v. *Hard to Stop LLC*, 2024 WL 3338944 (11th Cir. July 9, 2024) (No. 22-10774), cert. denied, 145 S. Ct. 1062 (2025).

3. It is true (Br. in Opp. 9) that the Court has previously denied certiorari on the question presented. But when it did so, only the Ninth Circuit had held that the safety exception applies to common-law negligent-selection claims against freight brokers. Now that the Sixth

Circuit has joined the Ninth Circuit and intentionally split from the Seventh and Eleventh Circuits, it is exceedingly unlikely that the conflict will resolve itself without this Court's intervention. And the need for the Court's resolution of the question presented is particularly pressing given that the circuit conflict already covers so many of the most important States for the shipping industry. See Pet. 24. Only the Court can resolve the disagreement and bring uniformity and predictability to this important area of federal law.

B. The Decision Below Is Incorrect

Respondent devotes most of the brief in opposition (at 9-16) to defending the Sixth Circuit's decision on the merits. Although the merits are ultimately a matter for another day, respondent's arguments only underscore why the decision below was wrong.

1. Respondent argues that a common-law negligent-selection claim against a freight broker operates "with respect to motor vehicles"—that is, "concerns" or "involves motor vehicles"—because the claim cannot be "disentangle[d] [from] motor vehicles." Br. in Opp. 9-10 (citations and alteration omitted). But such an attenuated connection could be said to exist for virtually any service in the transportation industry (for example, dispatch software providers and billing firms). If such an indirect connection sufficed, then the safety exception would eviscerate the FAAAA's preemption of state laws affecting broker services.

The FAAAA's text and structure demand a more direct connection. See Pet. 17-20. Respondent has no persuasive explanation for why Congress would want to preempt all *intra*state broker regulations but not all *inter*state broker regulations. See Pet. 18; Br. in Opp. 11. And although respondent claims (Br. in Opp. 11-12) that

its reading of the safety exception would not render the preemption provision superfluous, it does not explain how that could be so. See Pet. 19.

2. Respondent also argues (Br. in Opp. 12-13) that a common-law negligent-selection claim against a freight broker constitutes an exercise of the "safety regulatory authority of the State" simply by parsing the different components of that phrase. But respondent's argument ignores this Court's admonition that "words together may assume a more particular meaning than those words in isolation." *Federal Communications Commission* v. *AT&T Inc.*, 562 U.S. 397, 406 (2011). And the sole decision from this Court that respondent cites for his view of a State's "regulatory authority" does not even interpret that phrase. See Br. in Opp. 13 (quoting *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625, 637 (2012)). Read as a whole, the phrase "safety regulatory authority of the State" does not naturally encompass common-law tort claims against freight brokers by private parties seeking recompense for past harms. See Pet. 20-22.

3. Respondent further suggests (Br. in Opp. 13) that common-law negligent-selection claims against freight brokers are not preempted because they do not fall within the scope of Section 14501(c)'s preemption provision in the first place. But respondent offers no plausible reason to question the unanimous body of authority rejecting that argument. See *Miller* v. *C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1023-1025 (9th Cir. 2020), cert. denied, 142 S. Ct. 2866 (2022); *Aspen American Insurance Co.* v. *Landstar Ranger, Inc.*, 65 F.4th 1261, 1266-1268 (11th Cir. 2023); *Ye*, 74 F.4th at 458-460; Pet. App. 8a-10a.

4. Finally, respondent invokes the FAAAA's purpose. See Br. in Opp. 14-16. But it is a familiar proposition that no statute "pursues its stated purpose at all costs." *Henson* v. *Santander Consumer USA Inc.*, 582

U.S. 79, 89 (2017) (internal quotation marks, citation, and alterations omitted). In any event, it is respondent's interpretation that would undermine the FAAAA's deregulatory purposes. Congress enacted that statute to prevent States from undermining federal deregulation through variable state-law requirements that would increase costs and reduce efficiency. See *Rowe* v. *New Hampshire Motor Transport Association*, 552 U.S. 364, 371 (2008). Allowing States to impose liability on brokers for negligent selection would force brokers to comply with a diverse array of extensive (and expensive) requirements, harming carriers, manufacturers, retailers, and consumers alike. See, *e.g.*, Chamber of Commerce Br. 19-21. While respondent argues (Br. in Opp. 14-16) that broker liability is necessary to promote safety, respondent ignores the many other provisions in federal and state law that do so already. See, *e.g.*, Pet. 6-7; Chamber of Commerce Br. 9-12.

C. The Question Presented Is Exceptionally Important And Warrants Review In This Case

Respondent does not dispute that the question presented is one of enormous legal and practical significance, especially for the transportation industry. See Pet. 22-24. Respondent also does not identify any vehicle problems with the petition. See Pet. 24-25. Nor does respondent dispute that this case presents at least as suitable a vehicle as *Montgomery* v. *Caribe Transport II, LLC*, No. 24-1238 (filed June 2, 2025). The Sixth Circuit's opinion in this case is comprehensive and passed on both of the principal arguments for why the safety exception might not apply to common-law negligent-selection claims against freight brokers. See *United States* v. *Williams*, 504 U.S. 36, 40-43 (1992). The question presented in this case is precisely framed to encompass those arguments, and the

petition in this case is supported by the Chamber of Commerce; the National Retail Federation; and the Transportation Intermediaries Association, the principal trade association for freight brokers.

Granting review in this case, either alone or in tandem with *Montgomery*, would allow this Court definitively to decide the scope of the safety exception. The Court should grant certiorari to resolve the acknowledged circuit conflict on the question presented and provide clarity about whether and when freight brokers face state-law liability for their selection of motor carriers.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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