No. 25-3

In the Supreme Court of the United States

MALCO ENTERPRISES OF NEVADA, INC.,
PETITIONER

v.

ALELIGN WOLDEYOHANNES

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

Respondent does not dispute that the question presented is important, affecting thousands of rental and leasing businesses throughout the U.S. and the prices consumers and others pay for the millions of rented and leased cars and trucks on the road today. Pet. 24-25; *Amicus* Br. of Am. Fin. Serv's Assoc. And respondent does not identify a single procedural impediment to this Court's review. Pet. 28.

Instead, respondent tries to recast the case as a dispute about Nevada's self-insurance laws and insists the Court should "limit the question presented to issues of federal law." Opp. 7. But that request is as unnecessary as it is unusual: The Nevada Supreme Court explicitly rested its decision on the meaning of the *federal* Graves Amendment, 49 U.S.C. § 301106, holding—in direct conflict with the rulings of federal appellate and state high courts—that a "financial responsibility law" under subsection (b) of the statute can include provisions that impose the very vicarious liability subsection (a) prohibits. The question presented is purely one of federal law, squarely implicating the uniform application of a federal statute.

Respondent alternatively argues the merits, contending that unless subsection (b) saves laws like

Nevada's, it "does no work whatsoever." Opp. 5. That is mistaken. Subsection (b) plays a critical role: It preserves the longstanding state authority to require minimum insurance or its equivalent as a condition of registering a vehicle. What it does not preserve is the very vicarious liability regimes Congress abolished.

This case presents exactly the kind of entrenched, nationally significant conflict that warrants review. And only this Court can break the intractable divide. What's more, the state court below nullified a federal statute that was enacted for the express purpose of ensuring national uniformity. The Court should grant certiorari to restore the uniformity Congress sought when it enacted the Graves Amendment.

I. The Decision Below Conflicts With Decisions Of State High Courts And Federal Courts

Until the decision below, every court to consider the issue—including the Eleventh Circuit and the supreme courts of Connecticut, Minnesota, Florida, and Rhode Island—held that the Graves Amendment preempts laws that impose vicarious liability on rental and leasing companies, whether or not those laws are cast as insurance requirements.

- In *Garcia* v. *Vanguard Car Rental USA, Inc.*, 540 F.3d 1242 (11th Cir. 2008), the court held that the Graves Amendment preempted a Florida law that imposed vicarious liability on rental companies that lacked certain coverage. See Pet. 11-13.
- In *Meyer* v. *Nwokedi*, 777 N.W.2d 218 (Minn. 2010), the court held that the Graves Amendment preempted a Minnesota law that imposed vicarious liability on rental companies that lacked certain coverage. See Pet. 13.
- In *Rodriguez* v. *Testa*, 993 A.2d 955 (Conn. 2010), the court held that the Graves Amendment

preempted a Connecticut law that imposed vicarious liability on rental companies that lacked certain coverage. See Pet. 13.

- In *Vargas* v. *Enterprise Leasing Co.*, 60 So. 3d 1037 (Fla. 2011), the court held that the Graves Amendment preempted a Florida law that imposed vicarious liability on rental companies that lacked certain coverage. See Pet. 13-14.
- In *Puerini* v. *LaPierre*, 208 A.3d 1157 (R.I. 2019), the court held that the Graves Amendment preempted a Rhode Island law that imposed vicarious liability on rental companies regardless of their coverage.[1]

Like the laws in those cases, the Nevada statute here imposes vicarious liability on rental companies that lack certain coverage. But unlike those cases, the court below *declined* to apply the Graves Amendment. So, in Nevada, rental companies can be vicariously liable for drivers' negligence, while in other jurisdictions, the Graves Amendment preempts vicarious liability under indistinguishable circumstances. That conflict warrants this Court's review.

Respondent doesn't dispute these divergent results. Instead, he makes two arguments. *First*, he contends that there is no "true" split, Opp. 7, because "[t]he only other court to have considered *Nevada's statutory regime* also upheld it under the Graves Amendment's savings clause," Opp. 10 (emphasis added) (citing *Lancer Ins. Co.* v. *Malco Enters. of Nevada, Inc.*, 2012 WL 830485, at *2 (D. Utah Mar. 9, 2012)). That argument goes nowhere.

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[1] Accord *Subrogation Div. Inc.* v. *Brown*, 446 F. Supp. 3d 542 (D.S.D. 2020) (South Dakota law preempted because it imposed vicarious liability on rental companies by making them primary insurers); *Second Child* v. *Edge Auto, Inc.*, 236 A.D.3d 499 (N.Y. App. Div. 2025) (New York law preempted for same reason).

For one thing, respondent is wrong about *Lancer*, because the court there did not analyze whether NRS 482.305 is a "financial responsibility law," but merely concluded that the defendant had not complied with "applicable Nevada law." *Id.* at *2-3. But more importantly, the question presented here implicates a split over the meaning of "financial responsibility law" in the federal Graves Amendment—not a split over "Nevada's statutory regime." Opp. 10.

Second, respondent quibbles about the reasoning of the cases in the split. Respondent attempts to elide the conflict among jurisdictions by distinguishing (i) laws that "require" companies to obtain specified coverage and impose vicarious liability for noncompliance, from (ii) laws that "induce" companies to obtain that coverage by holding them vicariously liable if they do not have that coverage (which respondent concedes are preempted). But that distinction is superficial. Using vicarious liability to enforce a "requirement" to obtain insurance is materially identical to using the threat of vicarious liability as an "inducement" to obtain insurance. Whichever way the law is styled, it imposes vicarious liability for *another person's negligence*, not "insurance-like requirements." *Garcia*, 540 F.3d at 1246. Review is warranted here because jurisdictions are divided on whether the Graves Amendment preempts such laws.

Further, respondent's effort at "harmoniz[ing]" the decisions in the split fails. Opp. 10-14. *Garcia* itself rejected respondent's requirement-versus-inducement distinction. The Eleventh Circuit made clear that even if Florida's vicarious liability statute imposed a requirement to obtain insurance, it still would not qualify as a financial responsibility law, because it was "premised upon the very vicarious liability the Graves Amendment seeks to eliminate." *Id.* at 1248. No matter how a state law operates, it is preempted if it ultimately imposes vicarious

liability for drivers' negligence. See *ibid.* Otherwise, the Graves Amendment's prohibition would be too easily evaded.

Respondent concedes (at 13) that *Subrogation Division Inc.* v. *Brown*, *supra*, "conflicts with the decision below." But that case is materially the same as the ones respondent tries to distinguish. *Subrogation Division* followed *Garcia*, *Meyer*, and *Rodriguez* in explaining that "[o]ther courts have reached the *same conclusion*" as it had about what constitutes a financial responsibility law. *Subrogation Div.*, 446 F. Supp. 3d at 552 n.9 (emphasis added; citing *Garcia*, 540 F.3d at 1246-1248; *Rodriguez*, 993 A.2d at 963; *Meyer*, 777 N.W.2d at 224); see *id.* at 553 n.10. *Subrogation Division* rested on what is ultimately the key takeaway from all of those cases: A state law "simply may not require rental companies to be vicariously liable for damages incurred solely by renters through insurance law or otherwise." *Id.* at 553.

Regardless, the Graves Amendment preempts Nevada's vicarious liability statute even under respondent's requirement-versus-inducement rationale. The Nevada law does not condition registration of rental vehicles on proof that the owner will cover drivers' negligence. To "register a vehicle intended to be leased[,] * * * a short-term lessor" must "demonstrate[] [the] financial ability to respond to damages by providing evidence of insurance." NRS 482.295. "Evidence of insurance" for a short-term lessor is defined as "a motor vehicle liability policy[] *or* * * * [a] certificate of self-insurance." NRS 485.034 (emphasis added). Self-insurance, in turn, requires only that the owner "possess the ability to pay judgments obtained *against him or her*." NRS 485.380 (emphasis added). And it is undisputed that petitioner has a certificate of self-insurance that has been deemed acceptable to permit it to register vehicles, including the vehicle involved in the accident in this case.

Pet. App. 18a. The Nevada Supreme Court made clear that the law at issue here is a "requirement" only in the sense that "NRS 482.305 *requires* that the independent minimum coverage provided under NRS 482.295 must also cover short-term lessees *in order for* the lessor to avoid joint and several liability to the injured third-party claimant for damages caused by the lessee." Pet. App. 11a (emphases in original) (quoting *Hall* v. *Enterprise Leasing Company-West*, 137 P.3d 1104, 1107 (Nev. 2006)). While the Nevada Supreme Court may call that a "requirement," it is plainly the same mechanism other courts have deemed an "inducement" for Graves Amendment purposes.[2]

One last point. If, as respondent claims (at 11), the decision below can be "harmonized" with other cases on the premise that Nevada uses vicarious liability as a "stick" rather than a "carrot," then this Court's review is all the more imperative. The Graves Amendment was enacted to restore national uniformity by preventing individual states from holding rental companies liable for the misconduct of individual drivers. See Pet. 23-29. Allowing states to easily circumvent preemption by

[2] The provision at issue in *Federated American Insurance Co.* v. *Granillo*, 835 P.2d 803 (Nev. 1992)—the case respondent cites to argue that Nevada requires owners to hold insurance that covers "any other person who uses the vehicle," Opp. 3 (cleaned up)—concerns a requirement for owners who are *not* self-insured short-term lessors. See NRS 485.3091. Tellingly, though respondent invoked that provision in briefing before the courts below, the Nevada Supreme Court never mentioned it in its opinion, but rather focused exclusively on the provisions in another chapter of the Nevada Revised Statutes governing registration of short-term rental vehicles. In short, NRS 482.305 does the same thing as the laws in *Garcia*, *Meyer*, *Rodriguez*, and *Vargas*: allows companies to self-insure without covering drivers, but "induces" them to cover drivers by requiring that coverage as a condition to avoid vicarious liability.

"requiring" rather than merely "inducing" companies to provide insurance "would render the preemption clause a nullity." *Garcia*, 540 F.3d at 1248. Every state could evade federal law by redrafting its liability scheme in similar terms. That outcome would return the nation to the patchwork of liability rules Congress enacted the Graves Amendment to abolish. Only this Court can restore the national uniformity Congress demanded.

II. The Decision Below Is Wrong

For the reasons discussed in the petition and *amicus* briefs, the decision below "is a textual travesty." *Amicus* Br. of Wash. Legal Found. 6; see Pet. 16-23. Respondent has little to say in its defense, other than to "challenge[]" petitioner to explain what laws subsection (b) of the Graves Amendment "saves" from preemption if not the Nevada statute here. Opp. 5. Respondent asks "what purpose the saving clause could possibly have * * * if it [does] not save at least some state laws that impose joint and several liability on rental car companies." Opp. 14.

The answer is in the statute itself. Subsection (a) of the Graves Amendment says a rental company "shall not be liable under the law of any State * * * by reason of being the owner of the vehicle," so long as "there is no negligence or criminal wrongdoing on the part of" the rental company (such as faulty equipment). 49 U.S.C. § 30106(a)(2). That means companies cannot be vicariously liable for a renter's negligence.

Subsection (b) clarifies that subsection (a) does not displace state laws imposing insurance or proof-of-financial-capacity requirements on owners as a condition of registering or operating vehicles. That is why NRS 482.295, which requires evidence of insurance or self-insurance before registration, is preserved. Subsection (b) also makes clear that states still can, for example, "suspend the license and registration of, or otherwise penalize a car owner who fails to meet [insurance]

requirements." *Garcia*, 540 F.3d at 1249. "They simply may not impose such judgments against rental car companies based on the negligence of their lessees." *Ibid.* In short, subsection (b) preserves insurance requirements, but it does not authorize states to reimpose vicarious liability simply by clothing it in the *garb* of an insurance requirement. See *id.* at 1248-1249 (explaining "financial responsibility").

Respondent is wrong that this reading makes subsection (b) ineffective. Long before the Graves Amendment, every state had financial responsibility statutes requiring owners to maintain insurance, bonds, or self-insurance as a precondition to registration. See, *e.g.*, NRS 482.295. Subsection (b) ensures that the underlying "financial responsibility laws" are not "supersede[d]" and, in effect, thrown out with the bathwater. See, *e.g., Garcia*, 540 F.3d at 1248; *Rodriguez*, 993 A.2d at 967. As *amici* explain, the two subsections preserve "state motor-vehicle codes mandating insurance for licensing or registration, *not* tort-based liability schemes." *Amicus* Br. of Wash. Legal Found. 5. But NRS 482.305 provides that the owners of already lawfully registered vehicles are vicariously liable if they do not provide certain levels of liability insurance to their renters.

The Congressional debate confirms this reading. Representative Graves reassured his colleagues that the statute would not affect state "minimum requirements for insurance," 151 Cong. Rec. H1202 (daily ed. Mar. 9, 2005), which can include liability coverage for drivers' own accidents in rental vehicles. Likewise, he emphasized, it remains "up to the States" to impose "liab[ility] [on rental and leasing companies] for * * * their negligence or for their equipment." *Ibid.*

At the same time, Congress deliberately rejected opponents' efforts to preserve vicarious liability regimes

in high-tourism states. The savings clause was meant to protect minimum-insurance laws, not revive the very liability schemes Congress had just preempted.

Even if respondent were right that petitioner's reading of subsection (b) does not "save" any form of vicarious liability, "sometimes the better overall reading of the statute contains some redundancy * * * as Congress may emplo[y] a belt and suspenders approach to ensure its aims are met." *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1350 n.5 (2020) (quotation marks omitted). That is the far better reading of subsection (b) than respondent's reading, under which the savings clause "would swallow the rule" and render the Graves Amendment's "preemption clause a nullity." *Garcia*, 540 F.3d at 1248.

These issues are ripe for review, immensely important, and cleanly presented. The state court below destroyed the uniformity Congress demanded and, if allowed to stand, will return the industry to the patchwork Congress abolished. Nevada's end-run offers every state a blueprint for undoing federal law: Simply repackage vicarious liability as an "insurance requirement." Only this Court can restore the uniform federal standard the Graves Amendment guarantees.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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