No. __________

In the Supreme Court of the United States

Julio del Rio, *et al.*,

Petitioners,

v.

CrowdStrike, Inc. and CrowdStrike Holdings, Inc.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

BEN BARNOW
Counsel of Record
BARNOW AND ASSOCIATES, P.C.
205 W. Randolph St.,
Suite 1630
Chicago, IL 60606
Tel: 312-621-2000
b.barnow@barnowlaw.com

ROBERT K. SHELQUIST
CUNEO GILBERT & LADUCA, LLP
5775 Wayzata Blvd.,
Suite 620
St. Louis Park, MN 55416

CORY S. FEIN
CORY FEIN LAW FIRM
13105 Northwest Fwy.,
Suite 705
Houston, TX 77040

Counsel for Petitioners

QUESTION PRESENTED

The Airline Deregulation Act of 1978 is an economic deregulation statute intended to promote reliance on competitive market forces in the airline industry. To prevent the States from interfering with federal deregulation and ensure uniformity, the Act preempts state laws and regulations "related to a price, route, or service of an air carrier that may provide air transportation under this subpart." 49 U.S.C. § 41713(b)(1).

Respondents CrowdStrike, Inc. and its parent company CrowdStrike Holdings, Inc. (together, "CrowdStrike") developed defective commercial cybersecurity software that caused a massive information technology system outage in July 2024 (the "CrowdStrike Outage" or "Outage"). Petitioners brought state-law tort and product liability claims against CrowdStrike for injuries and damages they suffered as a result of the CrowdStrike Outage's massive disruption of all businesses employing its software and, specific to this case, global air travel. The District Court and Court of Appeals below held the ADA preempted Petitioners' claims against CrowdStrike. The question presented is:

Whether the Airline Deregulation Act's preemption of claims "related to a . . . service of an air carrier" extends to claims arising from an independent third-party software vendor's development of defective software when the third-party vendor does not transport passengers, does not provide services to passengers, and has no commercial relationship with airline passengers.

PARTIES TO THE PROCEEDING

Petitioners Julio del Rio, Jack Murphy, Steven Bixby, Alicia Kirby, Philip Kirby, Jennie Aguayo, Christopher Harlan, and Sara Harlan were plaintiffs before the District Court and plaintiffs-appellants before the Court of Appeals.

Respondents CrowdStrike, Inc. (not publicly traded) and CrowdStrike Holdings, Inc. (NASDAQ: CRWD) were defendants before the District Court and defendants-appellees before the Court of Appeals.

STATEMENT OF RELATED PROCEEDINGS

The following cases are related to this proceeding under Rule 14.1(b)(iii):

- *del Rio v. CrowdStrike, Inc.*, No. 1:24-cv-00881-RP, U.S. District Court for the Western District of Texas. Judgment entered June 18, 2025.

- *Harlan v. CrowdStrike Holdings, Inc.*, No. 1:24-cv-00954-RP, U.S. District Court for the Western District of Texas. Judgment entered June 18, 2025.

- *del Rio v. CrowdStrike, Inc.*, No. 25-50518, U.S. Court of Appeals for the Fifth Circuit. Judgment entered May 20, 2026, petition for rehearing en banc denied June 15, 2026.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Rules

OPINIONS BELOW

The decision of the Court of Appeals is unpublished, but may be found at 2026 U.S. App. LEXIS 14485 and is reproduced at App. 1a. The decision of the District Court is published at 787 F. Supp. 3d 768 and reproduced at App. 2a–15a. The decision of the Court of Appeals denying rehearing is unpublished, but may be found at 2026 U.S. App. LEXIS 17309 and is reproduced at App. 16a–17a.

JURISDICTIONAL STATEMENT

The Court of Appeals issued its judgment on May 20, 2026. The Court of Appeals denied Petitioners' petition for rehearing en banc on June 15, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Airline Deregulation Act of 1978, 49 U.S.C. § 41713(b)(1):

> PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

PETITION FOR WRIT OF CERTIORARI

Petitioners Julio del Rio, Jack Murphy, Steven Bixby, Alicia Kirby, Philip Kirby, Jennie Aguayo, Christopher Harlan, and Sara Harlan respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

STATEMENT OF THE CASE

I. Factual Background

CrowdStrike develops and licenses commercial cybersecurity software, including its flagship product, Falcon. CrowdStrike licenses its software on a subscription basis to more than 29,000 commercial customers, including hundreds of Fortune 500 companies across industries ranging from finance and healthcare to technology and transportation. CrowdStrike retains ownership of the Falcon software at all times.

The Falcon platform continuously monitors customers' networks for threats and provides information to assist in detecting and responding to them. *See* App. 3a. The Falcon platform is a combination of the Falcon Sensor, the software program installed directly onto the individual computers on a customer's network, and CrowdStrike's security cloud infrastructure. Once installed, Falcon uses machine learning, artificial intelligence, exploit blocking, and behavioral analysis to detect suspicious activity in real time.

CrowdStrike designed Falcon to operate as "privileged software" at the "kernel" level of Microsoft Windows, giving Falcon unfettered access to the core processes of Windows that manage a computer's operation. The trade-off for this design choice is that a defect in software operating at the kernel level can cause the operating system itself to fail.

CrowdStrike regularly updates the Falcon Sensor in two ways. "Sensor content" updates enhance the Sensor's threat-detection capabilities by altering the client installed on customers' computers, while "rapid response content" directs Falcon's detection and response capabilities without changing the Sensor's code. Sensor content includes "template types," which control how the Sensor collects and processes data, while rapid response content includes "template instances," which provide instructions and data to specific template types. CrowdStrike pushes rapid response content updates to the Sensor from the cloud several times per day.

The events that ultimately caused the July 19, 2024 CrowdStrike Outage began months earlier, when CrowdStrike introduced a defective template type into the Falcon Sensor. On February 8, 2024, CrowdStrike released Falcon Sensor version 7.11, which introduced a new "IPC Template Type" intended to address threats targeting a specific process in Windows computers. However, the update contained a defect causing a mismatch between the 20 inputs the Sensor was programmed to provide to the template and the 21 inputs the template was programmed to analyze. As a result, each time the Sensor used the IPC Template Type, there was a mismatch between the amount of data the Sensor provided and the amount the template type attempted to process.

Although CrowdStrike maintains that the template was developed and tested according to its standard procedures, it conceded the defect was not detected during testing of the new Sensor version, testing of the template itself, or the subsequent release of rapid response content for the template in March and April 2024. Those rapid response content updates were programmed to accept any value or no value at all for the 21st input, further masking the defect.

CrowdStrike employs a "content validator" program to screen rapid response content updates prior to release. However, CrowdStrike's content validator was itself defective; like the template, it had been programmed to assume the Sensor would provide 21 inputs to the template. The content validator therefore failed to flag the mismatch between the template and the Sensor. CrowdStrike admitted this defect in the content validator was a cause of the CrowdStrike Outage.

These defects surfaced on July 19, 2024, when CrowdStrike released two new rapid response content updates for the defective template. *See* App. 3a. CrowdStrike's defective content validator passed both updates despite one containing problematic data. Because the content validator approved the new updates, and given that CrowdStrike had already released updates for the defective template seemingly without issue, CrowdStrike pushed the updates to all of its customers without further testing, without rolling out the update to small groups of users at a time in a staged deployment to monitor for potential problems, and on a Friday when technical support was limited.

That decision proved catastrophic. While prior rapid response content updates tolerated the missing 21st input, the July 19 update required the Sensor to provide all 21 inputs. The Sensor's attempt to generate the missing value triggered an "out-of-bounds memory read" error. Despite the well-known risk of memory read errors, CrowdStrike had failed to program Falcon with any safeguards against this common issue. The memory read error caused Falcon to crash and, because it operated at the kernel level, its failure in turn caused Windows itself to crash. CrowdStrike has admitted that this out-of-bounds memory read was a cause of the Outage.

CrowdStrike's negligent update deployment practices compounded the problem. Rather than releasing updates gradually in a staged rollout, CrowdStrike habitually pushed updates to many customers simultaneously. CrowdStrike also forced the defective update on customers regardless of any settings meant to prevent automatic updates. Following the Outage, CrowdStrike admitted it should have deployed the update in stages.

When the defective update reached Windows computers on July 19, 2024, chaos ensued. Computers that received the defective update were forced into a recovery boot loop—attempting to start, hitting the Falcon memory read error, and crashing, only to restart and begin the cycle again. *See* App. 3a. Once a computer was afflicted with the defective update, fixing the problem was no simple task. With the computers stuck in a boot loop, the update could not be remotely undone; IT personnel were forced to manually revert the update on every computer, one at a time.

The scale of the Outage was staggering: the defective software disabled over 8.5 million computers worldwide, producing "a global tech disaster" considered "one of the largest global IT system outages in history." In a letter to CrowdStrike's CEO, members of Congress's Homeland Security Committee confirmed that the Outage inflicted "major impacts to key functions of the global economy, including aviation, healthcare, banking, media, and emergency services."

As with CrowdStrike's customers in other industries, airlines that used Falcon on their internal IT systems were hard-hit by the Outage. App. 3a–4a. With their computers nonoperational, affected airlines could not access necessary operational systems. The resulting operational disruptions soon cascaded into the delay or cancellation of tens of thousands of flights on July 19, 2024 and the days that followed.

The CrowdStrike Outage directly caused Petitioners, who were attempting to travel at the time, to incur physical injuries and damages including costs of additional meals, lodging, and alternative travel arrangements, as well as lost deposits and benefits of purchases they missed as a result of the delays and cancellations. App. 4a. Petitioners initiated this litigation in response to CrowdStrike's systematic failures which resulted in the CrowdStrike Outage.

II. Procedural History

On August 5, 2024, Petitioners del Rio, Murphy, and Bixby filed a putative class action against CrowdStrike in the United States District Court for the Western District of Texas. On August 19, 2024, Petitioners Christopher Harlan and Sara Harlan filed a separate putative class action against CrowdStrike in the same court. The District Court granted Petitioners' motion to consolidate the related actions and appoint interim class counsel on November 6, 2024. The District Court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2).

Petitioners filed a Consolidated Class Action Complaint (the "Complaint") on December 6, 2024, which added Petitioners Alicia Kirby, Philip Kirby, and Jennie Aguayo as plaintiffs and asserted claims for negligence, negligent design, negligent failure to test, negligent failure to warn, and public nuisance on behalf of themselves and a putative class of individuals who incurred damages as a result of the CrowdStrike Outage's effects on air travel.

CrowdStrike moved to dismiss the action on February 4, 2025, arguing, as relevant here, that Petitioners' claims were preempted under the ADA preemption clause's services prong. App. 6a. Petitioners responded on April 7, 2025, demonstrating that preemption did not apply because their claims neither relate to, nor have a significant effect on, air carrier services. CrowdStrike filed its reply on May 7, 2025. Petitioners sought and were granted leave to file a surreply, which they did on June 4, 2025.

The District Court granted CrowdStrike's motion to dismiss on June 18, 2025, finding Petitioners' claims, which were premised on CrowdStrike's negligent failures in the development, testing, and release of updates for the Falcon software platform, were related to airline services within the meaning of the ADA and would have a forbidden significant effect on airline regulation. App. 2a–15a.

Petitioners timely appealed the District Court's order on June 25, 2025. Briefing in the Fifth Circuit Court of Appeals concluded on December 12, 2025. Oral argument was heard before Judges Richman, Duncan, and Oldham on March 30, 2026. On May 20, 2026, the Panel entered a decision pursuant to Fifth Circuit Rule 47.6 affirming the District Court's dismissal of Petitioners' claims without an opinion. App. 1a. Petitioners timely petitioned for rehearing en banc on June 3, 2026, which the Fifth Circuit denied on June 15, 2026. App. 16a–17a.

REASONS FOR GRANTING THE WRIT

This case raises an important and recurring issue that has deeply divided the Courts of Appeals for nearly thirty years: what constitutes a "service" under the Airline Deregulation Act of 1978 ("ADA"), which preempts state-law claims "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). The ADA itself does not define "service," and absent definitive guidance from this Court, the Courts of Appeals have adopted conflicting interpretations. The resulting nationwide patchwork of preemption standards is antithetical to the uniformity of regulation the ADA was meant to achieve.

The Fifth Circuit has adopted a broad interpretation of service which encompasses contractual matters incidental to the transportation itself, including ticketing, boarding procedure, and baggage handling. The Ninth Circuit's far narrower interpretation limits service to only the prices, schedules, origins, and destinations of air transportation. Other Circuit Courts of Appeals have since aligned themselves on either side of this conflict, leaving air carriers, passengers, and the courts without a consistent standard for when preemption applies.

The decision below deepens that long-standing conflict by extending the ADA's preemption clause to shield a third-party software developer from state-law tort and product liability claims arising from a global technology outage that disrupted airline operations and caused Petitioners to incur damages as a result. This unwarranted expansion of ADA preemption has major implications for litigation against a wide range of airline vendors and threatens to destroy litigants' extant rights.

Petitioners' claims arose from CrowdStrike's alleged negligent development and testing of defective software. CrowdStrike is not itself an air carrier, provides no service on behalf of air carriers, and has no relationship with passengers. Yet the Fifth Circuit held the ADA preempts Petitioners' ordinary tort and product liability claims despite those claims relating to conduct which falls well outside even the broadest interpretation of service adopted by the Circuit Courts of Appeals. In affirming without issuing a written opinion, the Fifth Circuit tacitly sanctions a dramatic expansion of the ADA's preemptive scope, transforming a provision enacted to prevent state economic regulation of airlines into a broad liability shield for third-party vendors whose independent conduct affects airline operations. An unpublished and summary affirmance has effectively expanded federal preemption beyond any previously articulated standard applied by this or other courts.

Left undisturbed, the decision below expands the existing conflict between the Circuit Courts of Appeals over the meaning of "service of an air carrier." This case is an excellent vehicle to resolve that conflict: it is an appeal from a final judgment, was decided on the pleadings, and involves a pure question of statutory interpretation. The Court should grant certiorari to resolve the conflicting interpretations of service under the ADA and provide much-needed clarity to lower courts on the scope of preemption under the ADA.

I. The Courts of Appeals are Deeply and Openly Divided on the Definition of Service of an Air Carrier

A. The Court Has Not Defined Service of an Air Carrier in Prior Cases Considering ADA Preemption

This Court has addressed the scope of ADA preemption on three occasions, but has never decided the issue presented in this case.

The Court first considered the ADA's preemption provision in *Morales v. TWA*, 504 U.S. 374 (1992), where it defined the phrase "related to" broadly to hold the ADA preempts "[s]tate enforcement actions having a connection with, or reference to, airline 'rates, routes, or services.'" *Id.* at 384. The Court further held that preemption occurs where state law has a "forbidden significant effect" on prices, routes, or services, but noted some laws may affect prices, routes, or services "in too tenuous, remote, or peripheral a manner" to be preempted. *Id.* at 388, 390.

In *American Airlines v. Wolens*, 513 U.S. 219 (1995), the Court was tasked with interpreting the phrase "enact or enforce any law" to determine whether the ADA preempted state consumer protection law claims and breach of contract claims brought against an airline in response to changes to the airline's frequent flyer program. *Id.* at 222, 226. The Court found the ADA prohibits states from "imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated." *Id.* at 232–33. The ADA preempted the consumer protection law claims because they sought to proscribe the airline's conduct, but did not preempt the breach of contract claims because they sought merely to enforce the airline's "own, self-imposed undertakings," rather than a state's policy. *Id.* at 227–29, 232–33.

The Court interpreted the phrase "other provision having the force and effect of law" to include common law claims in *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 284 (2014). The Court explained that since preemption is primarily concerned with the effect of a law, regulation, or provision of law on the ADA's deregulatory purpose, common law rules that undermine the ADA's economic goals are preempted. *Id.* at 283.

In dicta, the Court has described services as "access to flights and class-of-service upgrades," *Wolens*, 513 U.S. at 226, and as "access to flights and to higher service categories." *Ginsberg*, 572 U.S. at 284. However, neither *Morales*, *Wolens*, nor *Ginsberg* resolves the issue presented here which has divided the Courts of Appeals—the meaning of "service of an air carrier." This case offers an opportunity to finally settle this long-disputed issue.

B. Absent Guidance From This Court, the Courts of Appeals Have Adopted Conflicting Definitions of Service

The broad-versus-narrow split in the Courts of Appeals' interpretations of service arises from the contradictory definitions adopted by the Fifth Circuit in *Hodges v. Delta Airlines*, 44 F.3d 334 (5th Cir. 1995) (en banc) and the Ninth Circuit in *Charas v. TWA*, 160 F.3d 1259 (9th Cir. 1998) (en banc). As other Courts of Appeals have weighed in on the issue, the resulting patchwork of approaches radically alters the scope of ADA preemption across the country—the very outcome Congress sought to avoid through the ADA.

In *Hodges*, the Fifth Circuit considered whether the ADA preempted a state-law tort claim based on negligent operation of an aircraft. 44 F.3d at 335. The court adopted an expansive definition of "services":

> "Services" generally represent a bargained-for or anticipated provision of labor from one party to another. If the element of bargain or agreement is incorporated in our understanding of services, it leads to a concern with the contractual arrangement between the airline and the user of the service. Elements of the air carrier service bargain include items such as ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself. These matters are all appurtenant and necessarily included with the contract of carriage between the passenger or shipper and the airline. It is these [contractual] features of air transportation that we believe Congress intended to de-regulate as "services" and broadly to protect from state regulation.

Id. at 336 (alteration in original).

As defined in *Hodges*, a service is coextensive with the "bargained-for or anticipated provision of labor" between an air carrier and a passenger. *Id.* This broad definition sweeps not only claims derived from an air carrier's provision of transportation within the

ADA's preemptive scope, but also claims arising from the "accoutrements of the passenger- or shipper- and carrier contract" such as ticketing, boarding, and baggage handling. *See id.* at 336–37.

In a companion case decided concurrently with *Hodges*, the Fifth Circuit found the ADA did not preempt state-law tort claims arising from an airline's failure to prevent a hijacker from boarding a plane. *Smith v. Am. W. Airlines*, 44 F.3d 344, 345 (5th Cir. 1995) (en banc). The court held service includes the economic and contractual decisions regarding boarding, such as decisions to overbook a flight or whether to board particular passengers, but does not include safety. *Id.* at 346–47. Finding the plaintiffs' claims concerned the safety of their flight rather than the airline's economic practices regarding boarding, the court held the claims were not preempted. *Id.* at 347.

Prior to *Charas*, the Ninth Circuit interpreted the ADA similarly to *Hodges*. *See, e.g.*, *Harris v. Am. Airlines*, 55 F.3d 1472, 1476 (9th Cir. 1995) (finding preempted claims "pertain[ing] directly to a 'service' the airlines render: the provision of drink"); *Gee v. Sw. Airlines*, 110 F.3d 1400 (9th Cir. 1997), *as amended*, 1997 U.S. App. LEXIS 12266, at *15 (finding preempted claims related to "the service of alcoholic beverages to passengers").

The Ninth Circuit departed from this approach in *Charas*. Deciding whether the ADA preempted various state-law personal injury claims, the court held service refers to "the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail." *Charas*, 160 F.3d at 1261. The court explained that Congress used service in the ADA "in the public utility sense—i.e., the provision of air transportation to and from various markets at various times." *Id.* at 1266.

In this context, service "refers to such things as the frequency and scheduling of transportation, and to the selection of markets to or from which transportation is provided (as in, 'This airline provides service from Tucson to New York twice a day.')." *Id.* at 1265–66. The court held service "was not intended to include an airline's provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities" and "does not refer to the pushing of beverage carts, keeping the aisles clear of stumbling blocks, the safe handling and storage of luggage, assistance to passengers in need, or like functions." *Id.* at 1261, 1266. The Ninth Circuit expressly overruled two prior decisions which had interpreted service broadly to include beverage service. *Id.* at 1266 (overruling *Harris*, 55 F.3d 1472 and *Gee*, 110 F.3d 1400).

Following *Charas*, the Ninth Circuit held tort claims brought against an airline for allowing smoking on certain flights were not preempted because an airline's policy regarding smoking did not affect the frequency or scheduling of flights or the selection of markets the airline served. *Duncan v. Nw. Airlines, Inc.*, 208 F.3d 1112, 1115 (9th Cir. 2000), *cert. denied*, 531 U.S. 1058 (2000).

In *National Federation of the Blind v. United Airlines, Inc.*, 813 F.3d 718, 722 (9th Cir. 2016), the Ninth Circuit held the ADA did not preempt claims brought pursuant to California antidiscrimination laws alleging an airline's automatic kiosks were not accessible to blind persons. While the kiosks aided passengers in "accessing flight information, checking in for flights, printing boarding passes, checking baggage, and selecting and upgrading seats," service includes only a price, schedule, origin, or destination of point-to-point transportation. *Id.* at 723, 726. Even though the kiosks "facilitate[d] services that relate to air transportation," they were merely an amenity the airline provided to passengers, not a service in the public utility sense. *Id.* at 726.

The conflict between *Hodges* and *Charas* is clear: matters beyond transportation, including ticketing, boarding procedures, provision of beverages, and luggage handling, are services of an air carrier under *Hodges* but not under *Charas*. *Hodges*, 44 F.3d at 336; *Charas*, 160 F.3d at 1261. Subsequent decisions from other Circuits have only exacerbated the problem.

In *Travel All Over the World v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1428 (7th Cir. 1996), the Seventh Circuit considered whether the ADA preempted a travel agency's claims against an airline for cancelling the agency's clients' reservations, depriving the travel agency of its commission, and for allegedly making false statements about Travel All in an attempt to harm Travel All's business. Following the Fifth Circuit, the Seventh Circuit adopted *Hodges*'s definition of service and held that the travel agency's slander and defamation claims were not preempted under the ADA because the airline's statements underlying the claims neither expressly referred to air carrier services nor were services themselves since the airline's "false statements . . . were not part of any contractual arrangement that [the airline] had with Travel All or its clients." *Id.* at 1433.

In contrast, the travel agency's claims for tortious interference, intentional infliction of emotional distress, and fraud were preempted to the extent those claims were "based on the airline's refusal to transport passengers who had booked their flights through Travel All," but were not preempted to the extent they relied on the airline's false statements about Travel All. *Id.* at 1434. The court explained that while services "include all elements of the air carrier service bargain," certain actions of airline personnel would not be considered a service when "they are not part of any contractual arrangement with the airline." *See id.*

The Fourth Circuit has held "[u]ndoubtedly, boarding procedures are a service rendered by an airline." *Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998) (citing *Hodges*, 44 F.3d at 336, 339) (additional citations omitted). The Fourth Circuit has also held the ADA preempted false advertising claims regarding FedEx's delivery guarantees because the claims implicated the service of FedEx's delivery of packages. *See Wagman v. Fed. Express Corp.*, No. 94-1422, 1995 U.S. App. LEXIS 3111, at *7 (4th Cir. Feb. 17, 1995).

The Sixth Circuit has adopted *Hodges*'s definition of service as referring to the "bargained-for or anticipated provision of labor from one party to another." *Headstream Techs., LLC v. FedEx Corp.*, No. 22-1410, 2023 U.S. App. LEXIS 2680, at *9 (6th Cir. Feb. 1, 2023) (citing *Hodges*, 44 F.3d at 336) (additional citations omitted). Applying this broad definition, the court held FedEx's package handling and delivery were services under the ADA. *See id.* (citing *Tobin v. Fed. Express Corp.*, 775 F.3d 448, 454 (1st Cir. 2014)). The court has also indicated airline reservations fall within the definition of service. *Wellons v. Nw. Airlines, Inc.*, 165 F.3d 493, 495 (6th Cir. 1999).

Recognizing that a majority of Circuits to have considered the issue construed service broadly to include matters beyond transportation, the Second Circuit has held service encompasses onboard amenities including the provision of food, water, electricity, and restrooms to passengers. *Air Transp. Ass'n of Am. v. Cuomo*, 520 F.3d 218, 222, 224 (2d Cir. 2008). The Second Circuit has also held an airline's practice of bumping ticketed passengers from a flight was a service because it implicates an anticipated provision of labor to passengers and is "a practice subject to competitive market forces." *Weiss v. El Al Isr. Airlines*, 309 F. App'x 483, 485 (2d Cir. 2009).

The First Circuit similarly interprets service to include matters beyond transportation. In *DiFiore v. American Airlines, Inc.*, 646 F.3d 81, 87 (1st Cir. 2011), the court held an airline's "conduct in arranging for transportation of bags at curbside into the airline terminal en route to the loading facilities" was a service under the ADA. The First Circuit considered and rejected the *Charas* interpretation of service, instead following *Hodges* to hold service includes ticketing, check-in and boarding procedures in *Bower v. EgyptAir Airlines Co.*, 731 F.3d 85, 94 (1st Cir. 2013).

In *Tobin*, the First Circuit held the ADA preempted a plaintiff's claims against FedEx for mislabeling and misdelivering to her a package containing illegal drugs. 775 F.3d at 454. The court held FedEx's package handling, address verification, and delivery procedures are "necessary appurtenances of the contract of carriage," and therefore a service, because they "plainly concern the contractual arrangement between FedEx and the users of its services (those who send packages)." *Id.* The court further held that the plaintiff's claims were preempted under its contract of carriage-centered interpretation of service notwithstanding the fact that the plaintiff was "a stranger to the contract of carriage" who had not contracted for services from FedEx. *Id.*

In *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1257 (11th Cir. 2003), the Eleventh Circuit evaluated the *Hodges* and *Charas* definitions of service before ultimately adopting the *Hodges* definition as the "more compelling" interpretation. *See also Koutsouradis v. Delta Air Lines, Inc.*, 427 F.3d 1339, 1344 (11th Cir. 2005) (describing baggage handling, passenger handling, and employee courteousness as services "inherent when you board an airplane").

However, while the Fifth Circuit defined service by reference to the bargained-for elements of air travel, the Eleventh Circuit emphasized services are limited to the "aspects of airline operations over which carriers compete." *Branche*, 342 F.3d at 1258. Thus, a service of an air carrier "includes not only the physical transportation of passengers, but also the incidents of that transportation over which air carriers compete." *Id.* at 1258–59. Since the ADA's purpose is to increase reliance on competitive market forces in the airline industry, services do not include "elements of air carrier operations over which airlines do not compete" and laws relating to those aspects of airline operations are not preempted. *Id.* at 1258.

Thus, the Eleventh Circuit sets out three elements that must be met by an ADA service: "(1) it must fit within the limited range of services over which airlines compete; (2) it must be bargained for; and (3) the bargained-for exchange must be between an air carrier and its consumers." *Amerijet Int'l, Inc. v. Miami-Dade Cnty.*, 627 F. App'x 744, 749 (11th Cir. 2015) (citing *Branche*, 342 F.3d at 1255–56). In centering service on aspects of competition between air carriers, the Eleventh Circuit imposes additional limits on the broad *Hodges* interpretation.

The Eighth and Tenth Circuits have yet to weigh in on the meaning of service, but have used the *Hodges* definition without deciding the issue. *Watson v. Air Methods Corp.*, 870 F.3d 812, 818 (8th Cir. 2017) (assuming without deciding that *Hodges*'s definition applies); *Day v. SkyWest Airlines*, 45 F.4th 1181, 1184 (10th Cir. 2022) (same).

In contrast to the majority of courts to address the issue, the Third Circuit rejected the Fifth Circuit's definition of service and endorsed the Ninth Circuit's approach. *Taj Mahal Travel v. Delta Airlines*, 164 F.3d 186, 194 (3d Cir. 1998). After considering both *Hodges* and *Charas*, the court ultimately found the Ninth Circuit's framing of service in a public utility sense more faithfully reflects the ADA's deregulatory purpose. *See id.* Rejecting the operations-services distinction articulated in *Hodges* in favor of a focus on economic competition, the court concluded that preemption properly turns on whether a claim imposes public-utility style regulation on airlines. *Id.* Thus, like the Ninth Circuit, the Third Circuit narrowly interprets service as referring to the frequency and scheduling of transportation and the selection of markets. *Id.* at 193; *see also id.* at 190–91 (describing services as including "direct or nonstop flights, or locations to which planes would fly").

II. The Issue is Important and Recurring

This case presents an acknowledged division of authority regarding the scope of the ADA's express preemption provision. Lower courts recognize that application of the preemption provision "ha[s] been hampered by the ambiguous preemption terminology." *Id.* at 194. Faced with such ambiguity, the Courts of Appeals have adopted materially different interpretations of service under the ADA, a conflict that shows no sign of resolving itself. *See Nat'l Fed'n of the Blind*, 813 F.3d at 726–30 (acknowledging Circuit split and rejecting argument that *Charas* is no longer good law after intervening Supreme Court decisions).

Congress included a preemption provision in the ADA to ensure uniform regulation across the country. *See, e.g.*, *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008) (A "regulatory patchwork is inconsistent with Congress' major legislative effort to leave such decisions, where federally unregulated, to the competitive marketplace."). Absent a uniform standard of "service," the court in which an action is brought becomes outcome determinative because claims relating to baggage handling, in-flight amenities, and airline vendors' conduct are actionable in some courts but preempted in others. *See Rombom v. United Air Lines*, 867 F. Supp. 214, 221 (S.D.N.Y. 1994) (Sotomayor, J.) ("The threshold inquiry under [the ADA] is to define whether the activity at issue in the claim is an airline service.").

The Courts of Appeals' conflicting interpretations of service leave air carriers, litigants, and the courts facing an unpredictable and inconsistent regulatory landscape in which the applicable definition of service, and therefore potential liability, varies by court. The result is that a preemption provision that Congress enacted specifically to prevent a patchwork of inconsistent regulation now creates "the very patchwork . . . that ADA preemption is meant to preclude." *Tobin*, 775 F.3d at 455.

Defining service is "an important issue that has divided the Courts of Appeals" and is "well suited for resolution by this Court." *Duncan*, 531 U.S. at 1058–59 (O'Connor, J., dissenting from denial of petition for writ of certiorari).[1] The Court should grant this petition to resolve this question and "provide needed certainty" to airline companies, passengers, and the courts. *Id.* at 1059. Few cases could present the issue in a cleaner posture.

The definition of "service of an air carrier," and therefore the scope of ADA preemption, is a recurring question facing the courts. As discussed *supra*, the issue of defining service has already reached the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, yet the scope of federal preemption continues to be debated absent an on-point decision from this Court. *See Nat'l Fed'n of the Blind*, 813 F.3d at 727.

This case involves tort and product liability claims against a software developer arising from defective cybersecurity software.[2] CrowdStrike's alleged negligent software development practices are extrinsic to the air carrier-passenger service bargain, and CrowdStrike does not provide any form of service to passengers. The decision below extends ADA preemption to claims against a software developer for conduct entirely unrelated to air travel or related functions, an expansive interpretation of service with

---

[1] Chief Justice Rehnquist and Justice Thomas joined Justice O'Connor in dissenting from the denial of a petition for writ of certiorari in *Duncan*, which raised a similar issue regarding the meaning of service under the ADA. 531 U.S. at 1059.

[2] This Court's previous ADA preemption cases all involved claims brought by or against air carriers regulated under the ADA. *Morales*, 504 U.S. at 380; *Wolens*, 513 U.S. at 225; *Ginsberg*, 572 U.S. at 278.

significant ramifications for wide swaths of the economy.

The modern aviation industry increasingly involves a complex web of airlines, technology companies, and third-party vendors. Under the overly broad approach employed in this case, ADA preemption stretches not only to the services *of* an air carrier, but to services provided *to* an air carrier. If allowed to stand, preemption here transforms the ADA from an economic deregulation statute into a broad shield protecting thousands of third-party vendors from potential liability simply for providing a product or service to an airline, no matter how divorced from the air carrier-passenger relationship. The preemption of the claims asserted in this litigation has far-reaching implications not only for the aviation industry, but for the $11.8 billion aviation software market[3] and the nearly $160 billion cybersecurity software market.[4] Resolving this issue now is vital to prevent further divergence between the Circuit Courts of Appeals, rectify the lower courts' patchwork approach to preemption, and ensure the ADA is not expanded beyond Congress's intent.

III. The Decision Below is Wrong

This case presents the opportunity to resolve an important question about the scope of ADA preemption long left unanswered, but it is also worthy

[3] *Aviation Software Market (2026-2033)*, GRAND VIEW RSCH. (June 2026), https://perma.cc/XQ92-S84J.

[4] Market Research Intellect, *Cybersecurity Software Market Driven by Escalating Cyber Threats, Rapid Digital Transformation, and Expanding Enterprise Security Investments*, PRNEWSWIRE (Feb. 18, 2026 10:45 AM), https://perma.cc/52A2-QEG8.

of review because the decision below cannot be squared with even the broadest interpretation of "service of an air carrier" adopted by the Courts of Appeals.

This case involves ordinary state-law tort and product liability claims against a third-party software developer premised on its alleged negligence in developing defective software. CrowdStrike licenses a commercial cybersecurity software product to entities across a range of industries, including certain airlines, but CrowdStrike is not an air carrier, provides no service to passengers, and has no relationship with Petitioners. Providing administrative cybersecurity software to an airline cannot plausibly be considered a service of an air carrier entitling CrowdStrike to immunity under any definition of service adopted by the Courts of Appeals.

The narrow *Charas* definition limits services to the public utility features of "the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail." *Charas*, 160 F.3d at 1261; *Taj Mahal Travel*, 164 F.3d at 193. The *Charas* approach excludes amenities airlines provide to passengers, including in-flight beverages, luggage handling, and assistance to passengers, from the realm of services. *Charas*, 160 F.3d at 1261. CrowdStrike's software development practices are even further removed from the provision of transportation than these amenities, and are clearly not a service of an air carrier.

The Ninth Circuit's decision in *National Federation of the Blind* illustrates this point. The airport kiosks at issue there allowed passengers "to perform various functions relevant to their air travel," including checking in for flights, printing boarding passes, and checking baggage. 813 F.3d at 723. The court held the kiosks were not themselves a "service" despite "facilitat[ing] services that relate to air transportation" because they were not an aspect of the transportation itself. *See id.* at 726–27.

CrowdStrike's Falcon platform is a security software program airlines utilized on their back-end administrative computer systems. Neither the software nor CrowdStrike's software development practices are an aspect of the service of transportation itself, and neither plays a direct role in "allow[ing] passengers to perform various functions relevant to their air travel" as the kiosks did. *Id.* at 723. CrowdStrike's development of defective software is less connected to the point-to-point transportation of passengers than the kiosks in *National Federation of the Blind* and therefore likewise "fall[s] outside the statutory definition of 'services'" under the ADA. *Id.* at 729.

Nor is CrowdStrike's conduct a service under the Fifth Circuit's broad interpretation of service. Under *Hodges*, services are "[e]lements of the air carrier service bargain" such as transportation, ticketing, boarding procedures, provision of food and drink, and baggage handling. 44 F.3d at 336. Services are limited to only those aspects of air transportation that are "appurtenant and necessarily included with the contract of carriage between the passenger . . . and the airline." *Id.* In holding otherwise, the Fifth Circuit's affirmance below radically expands service to include actions by an airline vendor completely external to the economic relationship between passengers and airlines.

This litigation arises from CrowdStrike's alleged negligence in developing defective software which caused a global computer outage with wide-reaching consequences, including in the airline industry. CrowdStrike develops a general software product used by some airlines, but it plays no role in the passenger-airline relationship and does not provide any form of service to passengers. CrowdStrike's software development is not a component of the contractual bargain between an airline and its passengers, and does not fall within *Hodges*'s definition of service.

Nothing in *Hodges* or the text of the ADA indicates preemption extends to protect a non-regulated entity that merely provides a product to an air carrier. In the few district court cases in which the ADA was held to preempt claims against an airline vendor, the vendors were directly engaged in providing an ADA service to passengers. *See In re Am. Airlines, Inc., Privacy Litig.*, 370 F. Supp. 2d 552, 555–56 (N.D. Tex. 2005) (holding the ADA preempts claims against a vendor who operated airline's ticketing website); *Pica v. Delta Air Lines, Inc.*, No. CV 18-2876-MWF (Ex), 2019 U.S. Dist. LEXIS 65985, at *6 (C.D. Cal. Feb. 14, 2019) (holding the ADA preempts claims against a vendor that provided "voice and chat services related to sales and support" for an airline); *Gordon v. Amadeus IT Grp., S.A.*, 194 F. Supp. 3d 236, 240 (S.D.N.Y. 2016) (holding the ADA preempts claims against technology providers who disseminate service and fare information).

CrowdStrike's conduct in negligently developing, testing, and deploying defective software is not an ADA service because it does not implicate any aspect of the economic or contractual relationship between airlines and passengers. The First Circuit held in *Tobin* that ADA preemption applies to claims against an air carrier brought by a plaintiff who "was a stranger to the contract of carriage." 775 F.3d at 454. However, the claims in *Tobin* arose from the air carrier's package handling and delivery procedures and so "plainly concern[ed] the contractual arrangement between FedEx and the users of its services (those who send packages)." *Id.* In contrast, the claims here seek redress for the consequences of CrowdStrike's development of defective software, a function which plays no role in the relationship between passengers and airlines. They do not seek "to hold [a defendant] liable at the point at which it provides a 'service' to its customers." *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1024 (9th Cir. 2020) (interpreting identical language found in preemption provision of the Federal Aviation Administration Authorization Act of 1994).

Hodges's bargain-centered interpretation of service does not encompass a third party's independent conduct wholly external to the airline-passenger relationship. Petitioners' claims arising from CrowdStrike's software development practices therefore do not relate to a service of an air carrier and are not preempted. *See Travel All Over*, 73 F.3d at 1434 (claims not preempted to the extent they were not based on services). The Fifth Circuit's decision below dramatically increases the ADA's preemptive scope, further widening the divide between the Courts of Appeals.

CrowdStrike's software development also fails to satisfy the elements the Eleventh Circuit considers when determining whether a function is an ADA service: "(1) it must fit within the limited range of services over which airlines compete; (2) it must be bargained for; and (3) the bargained-for exchange must be between an air carrier and its consumers." *Amerijet*, 627 F. App'x at 749.

Software development is not intrinsic to air transportation and not one of the "limited range of contexts" in which air carriers compete, unlike fares, routes, and timing. *Branche*, 342 F.3d at 1256; *see Fernald v. Sw. Airlines Co.*, No. 11cv0453 AJB (POR), 2011 U.S. Dist. LEXIS 171328, at *9 (S.D. Cal. Sept. 28, 2011) ("seat selection and price relate directly to deregulation's purpose, since airlines routinely compete with regard to prices and priority seating"). As explained *supra*, neither CrowdStrike's software development nor the Falcon software formed part of the bargained-for exchange between passengers and airlines, as illustrated by the fact that Petitioners had no knowledge of CrowdStrike prior to the Outage.

Finally, CrowdStrike provides a product to airlines for their own use. Any bargaining regarding CrowdStrike's software product occurs between CrowdStrike and a client airline, which "do[es] not in any way involve the 'airline-consumer' or 'airline-end user relationship.'" *Amerijet*, 627 F. App'x at 749 (finding airline's cargo handling service for other airlines is not an ADA service because "a contract between such parties would be secondary (and thus wholly separate and distinct) to any contract with the ultimate consumer").

The Fifth Circuit's decision below holding that development of a software product used by airlines is itself a "service of an air carrier" cannot be reconciled with any accepted interpretation of service. This significant and unwarranted departure from both this Court's and the Fifth Circuit's own precedents expands preemption far beyond the bounds of the statute's text and Congress's intent, further widening the conflict between the Courts of Appeals. Absent review, this decision extends sweeping immunity to independent third-party airline vendors merely for providing a service or product to a regulated air carrier. The petition for a writ of certiorari should be granted so the Court may resolve this important issue, provide necessary guidance to the lower courts, and properly limit the scope of ADA preemption.

IV. This Case is a Good Vehicle

This case presents an ideal vehicle for resolving the long-standing and important question of the proper meaning of "service of an air carrier" under the Airline Deregulation Act's express preemption provision. The petition squarely places before the Court an acknowledged and entrenched Circuit split over the scope of that term, and does so in a posture that exposes the need for a clear resolution to this issue: extending ADA preemption to state-law tort and product liability claims against a third-party vendor (here a software developer) for injury and damages to passengers with whom the third party had no contract or contact.

This case is an appeal from a final judgment resolved on the pleadings under Federal Rule of Civil Procedure 12(b)(6), leaving none of the potential concerns arising from interlocutory appeals and no factual disputes to impede review. There are no standing, jurisdictional, or arbitration issues. The interpretation of service of an air carrier under 49 U.S.C. § 41713(b)(1) was the dispositive issue below, and presents a pure question of statutory interpretation which was preserved and thoroughly briefed in the District Court and Court of Appeals.

Few cases could better illustrate how far the confusion over service has altered the scope of federal preemption, or how urgently this Court's guidance is needed. Preemption of claims against a third-party software developer for conduct wholly unconnected to the provision of air transportation or related activities squarely implicates the outer bounds of ADA preemption. This issue has divided the lower courts for nearly thirty years and, despite extensive consideration, has not resolved itself. The Court should intervene now to settle the split among the Circuits and establish a clear and concrete rule governing the scope of service-related ADA preemption.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BEN BARNOW
Counsel of Record
BARNOW AND ASSOCIATES, P.C.
205 W. Randolph St., Suite 1630
Chicago, IL 60606
Tel: 312-621-2000
b.barnow@barnowlaw.com

ROBERT K. SHELQUIST
CUNEO GILBERT & LADUCA, LLP
5775 Wayzata Blvd., Suite 620
St. Louis Park, MN 55416

CORY S. FEIN
CORY FEIN LAW FIRM
13105 Northwest Fwy., Suite 705
Houston, TX 77040

Counsel for Petitioners

APPENDIX

TABLE OF APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-50518

Julio Del Rio, *individually and on behalf of all others similarly situated*; Jack Murphy, *individually and on behalf of all others similarly situated*; Steven Bixby, *individually and on behalf of all others similarly situated*; Christopher Harlan; Sara Harlan; Philip Kirby; Jennie Aguayo; Alicia Kirby,

Plaintiffs—Appellants,

versus

CrowdStrike, Incorporated; CrowdStrike Holdings, Incorporated,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:24-CV-881
USDC No. 1:24-CV-954

Before RICHMAN, DUNCAN, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

AFFIRMED. *See* 5th Cir. R. 47.6.

*This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JULIO DEL RIO, JACK MURPHY, STEVEN BIXBY, ALICIA KIRBY, PHILIP KIRBY, JENNIE AGUAYO, CHRISTOPHER HARLAN, and SARA HARLAN, *individually and on behalf of all others similarly situated*, Plaintiffs, v. CROWDSTRIKE, INC., and CROWDSTRIKE HOLDINGS, INC., Defendants.	1:24-CV-881-RP

ORDER

Before the Court is Defendants CrowdStrike, Inc. and Crowdstrike Holdings, Inc.'s ("Defendants") Motion to Dismiss, or In the Alternative, to Strike, (Dkt. 31). Plaintiffs Julio del Rio, Jack Murphy, Steven Bixby, Alicia Kirby, Philip Kirby, Jennie Aguayo, Christopher Harlan, and Sara Harlan ("Plaintiffs"), individually and on behalf of all others similarly situated, filed a response, (Dkt. 33), Defendants filed a reply, (Dkt. 38), and Plaintiffs filed a sur-reply, (Dkt. 42). Having considered the parties' briefs, the evidence, and the relevant law, the Court finds that Defendants' motion should be granted.

I. BACKGROUND

Plaintiffs sued CrowdStrike alleging harms incurred after a faulty software update by CrowdStrike caused computer outages among airlines and airports, leading to flight delays and cancellations around the country. (Am. Compl., Dkt. 23). Plaintiffs assert various state-law claims for negligence and public nuisance, (*id.* at 44–55), and the Complaint makes the following allegations. CrowdStrike's "Falcon platform," which is "used by airlines and airports," is software that "helps protect systems against potential threats in a bid to minimize cybersecurity risks." (*Id.* at 16, 34). The airlines Plaintiffs used "rely heavily on cyber and network support to operate the[ir] essential systems." (*Id.* at 34). "CrowdStrike's airline customers and their passengers, including Plaintiffs and other Class members, relied on CrowdStrike's performance of its ongoing services to keep CrowdStrike's airline customers' airplanes flying as scheduled, among other things." (*Id.* at 52). CrowdStrike's Falcon platform released an update on July 19, 2024, which "contained . . . bugs, errors, and defects that caused computers running Microsoft Windows to repeatedly crash," resulting in airline flights being delayed or cancelled (the "CrowdStrike Outage"). (*Id.* at 25). It was CrowdStrike's "failure to properly develop, test, and deploy the Falcon update" that "resulted in the delay or cancellation of Plaintiffs' and Class members' flights." (*Id.* at 3). The CrowdStrike Outage "affected many separate [airline] systems, such as those used for calculating aircraft weight, checking in customers, and phone systems in [airline] call centers." (*Id*. at 38).

Plaintiffs, citizens of California, Ohio, Pennsylvania, Iowa, and Nevada, allege they experienced flight delays or cancellations on a variety of airlines due to the CrowdStrike Outage. Plaintiff Julio del Rio, who experienced travel disruptions in Hawaii and California, seeks expenses for booking new flights, Uber rides, and "us[ing] accrued paid time off to miss an additional day of work." (*Id*. at 4−5). Plaintiff Jack Murphy experienced delays in South Carolina and Georgia, causing him to spend "additional time and effort attempting to arrange an alternate flight," costing him gas money, and adding "wear" to his car because he "could not hire an Uber" after his late arrival time. (*Id*. at 5−6). Plaintiff Steven Bixby experienced delays in Pennsylvania and Illinois and later had "to return to the [Texas] airport to retrieve his luggage;" in total his flights took over seventeen hours although they were scheduled to take nine. (*Id*. at 6−7). Plaintiffs Alicia Kirby and Philip Kirby had their flights delayed in Minnesota, which led to expenses for new flights and hotels, clothes, toiletries, medication, Lyft rides, and "us[ing] vacation days for the days of work [they] missed." (*Id*. at 7−9). Plaintiff Jennie Aguayo's flight was delayed in Hawaii. (*Id*. at 10−11). She incurred expenses for purchasing new flights and meals, lost wages from missing work, and experienced anxiety, chest pains, and headaches. (*Id*.). Plaintiffs Christopher Harlan and Sara Harlan, flying from the Dominican Republic to Iowa via Georgia, incurred expenses in Georgia for lodging, Uber rides, parking, a house-sitter, and meals. (*Id*. at 11−13).

II. LEGAL STANDARD

Pursuant to Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In deciding a 12(b)(6) motion, a "court accepts 'all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.'" *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). "To survive a Rule 12(b)(6) motion to dismiss, a complaint 'does not need detailed factual allegations,' but must provide the plaintiff's grounds for entitlement to relief—including factual allegations that when assumed to be true 'raise a right to relief above the speculative level.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). That is, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

A claim has facial plausibility "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. "The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. A court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Dorsey v. Portfolio Equities,* *Inc.,* 540 F.3d 333, 338 (5th Cir. 2008) (citations and internal quotation marks omitted). A court may also consider documents that a defendant attaches to a motion to dismiss "if they are referred to in the plaintiff's complaint and are central to her claim." *Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004). But because the court reviews only the well-pleaded facts in the complaint, it may not consider new factual allegations made outside the complaint. *Dorsey,* 540 F.3d at 338. "[A] motion to dismiss under 12(b)(6) 'is viewed with disfavor and is rarely granted.'" *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (quoting *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009)).

III. DISCUSSION

Defendants argue that Plaintiffs' claims are preempted by the federal Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713, (Defs.' Mot. Dismiss, Dkt. 31, at 7), and the Court agrees. To prevent a patchwork of inconsistent state laws governing the airline industry, Congress included a preemption provision in the ADA, which expressly preempts state-law claims related to airline services, like Plaintiffs' claims. 49 U.S.C. § 41713(b)(1) (explaining that a state "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"). "To ensure that the States would not undo federal deregulation with regulation of their own, the ADA included a pre-emption provision, prohibiting the States from enforcing any law 'relating to rates, routes, or services' of any air carrier." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378–79 (1992).

In *Morales*, the Supreme Court interpreted the phrase "relating to" in the ADA's preemption provision broadly, concluding all "[s]tate enforcement actions having a connection with or reference to airline 'rates, routes, or services' are preempted" by the ADA. 504 U.S. at 384. Interpreting *Morales*, the Fifth Circuit has held that "[a]ny state law, including state common law, 'having a connection with or reference to' airline prices, routes, or services is preempted unless the connection or reference is 'too tenuous, remote, or peripheral.'" *Onoh v. Nw. Airlines, Inc.*, 613 F.3d 596, 599 (5th Cir. 2010) (quoting *Morales*, 504 U.S. at 390). "[A]irline services" include "ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself." *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (5th Cir. 1995). "Plaintiffs' claims 'relate to' [airline] services if they have a connection with or reference to them." *In re Am. Airlines, Inc., Priv. Litig.*, 370 F. Supp. 2d 552, 564 (N.D. Tex. 2005).

As an initial matter, Plaintiffs' claims would be preempted if they were brought against the airlines themselves. Plaintiffs' claims, which concern the impacts of flight delays and cancellations and the failure of airlines to adequately reschedule or compensate for them, relate directly to "airline services" such as "ticketing, boarding procedures, provision of food and drink, and baggage handling, in addition to the transportation itself," which are preempted. *Hodges*, 44 F.3d at 336. Along those lines, another court recently held that class-action common-law and state consumer protection law claims against an airline for harms caused by the CrowdStrike Outage and resulting delays and lost payments toward travel and airline tickets could not proceed because the ADA preempts them. *Bajra v. Delta Air*

Lines, Inc., No. 1:24-CV-3477-MHC, 2025 WL 1527076, at *12 (N.D. Ga. May 6, 2025). In *Bajra*, the court collected cases that found preemption where plaintiffs brought similar state tort law claims "related to refunds, reimbursements, and billing practices." *Id.* at 12; *see also Banga v. Gundumolgula*, No. 2:13-CV-00667-MCE, 2013 WL 3804046, at *3 (E.D. Cal. July 19, 2013), *report and recommendation adopted*, No. 2:13-CV-0667-MCD-CKDPS, 2013 WL 11332786 (E.D. Cal. Sept. 12, 2013) (finding that claims arising out of the airline's refund policy "are part of the reservations and ticketing process," which constitute a "service"); *Levey v. Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V.*, 529 F. Supp. 3d 856 (N.D. Ill. 2021) (finding claim preempted after the plaintiff alleged that the airline cancelled the plaintiff's ticket due to the COVID-19 pandemic, and when she sought a refund for the purchase price of the ticket, the airline refused and offered a travel credit instead); *Miller v. Delta Air Lines, Inc.*, No. 4:11-CV-10099-JLK, 2012 WL 1155138, at *2 (S.D. Fla. Apr. 5, 2012) (finding non-contractual claims that "arise from [an airline's] failure to inform customers of their right to reimbursement . . . for lost, damaged, or delayed baggage" constitute claims regarding "services" provided by the airline). Like in these cases, the Court concludes that Plaintiffs' claims concern the services they received from their respective airlines, i.e., the ticketing, re-booking, baggage services, and services such as hotel stays and meals afforded to them during their delays at the airport, and their suit would be preempted if brought against the airlines directly.[1]

---

[1] It is true that some claims are "too tenuous, remote, or peripheral" to be preempted by the ADA. *Morales*, 504 U.S. at 390; *see, e.g.*, *Wellons v. Nw. Airlines, Inc.*, 165 F.3d 493, 495 (6th Cir. 1999) (finding an employment discrimination suit's relation

That the Plaintiffs here bring their suit against CrowdStrike, rather than against the airlines themselves, does not prevent ADA preemption. Plaintiffs argue that CrowdStrike does not provide a service "related to" airline rates, routes, and/or services because CrowdStrike is a cybersecurity firm offering the same services across other sectors, not to airlines only. (Resp., Dkt. 33, at 4−5). But "ADA preemption is not limited to claims brought directly against air carriers"; rather, claims against entities other than airlines may also be preempted when they relate to an airline "price, route, or service." *See, e.g., Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 287 n.8 (5th Cir. 2002). As one example, in *In re American Airlines, Inc., Privacy Litigation*, the court dismissed state-law claims against an airline's website vendor, which allegedly disclosed passengers' information, and the research companies that received the information. 370 F. Supp. 2d at 556−57. The plaintiffs' state-law tort claims against airline vendors were "preempted because they have a

to airline services too tenuous to require preemption); *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 212 (2d Cir. 2011) (finding state and local environmental land-use laws too tenuous, remote, or peripheral to be preempted by ADA). But nothing suggests CrowdStrike's services are tenuous or peripheral. Rather, Plaintiffs allege that the airlines with which Plaintiffs contracted "rely heavily on cyber and network support to operate the[ir] essential systems." (Am. Compl., Dkt. 23, at 34). So too, they argue that airline passengers and customers "relied on CrowdStrike's performance of its ongoing services to keep CrowdStrike's airline customers' airplanes flying as scheduled, among other things." (*Id.* at 52). This is not akin to an employment discrimination suit or an environmental regulation, where courts have found only a tenuous or peripheral connection to airline services; by Plaintiffs' own allegations, the services CrowdStrike offers are core to the provision of airline services.

connection at least with [the airline's] ticketing service, including the reservation component." *Id*. at 564. The court noted that the vendor "play[ed] a role in maintaining [the airline's] website," *id*., and reasoned that the claims "are based on conduct that relates to [the airline's] ticketing service and its reservation component and for that reason are preempted," *id*. at 564–65.

Similarly, in *Pica v. Delta Air Lines, Inc*., customers sued an airline and its vendor, which provided voice and chat services for sales and support to the airline. No. CV 18-2876-MWF, 2019 WL 1598761, at *1 (C.D. Cal. Feb. 14, 2019). Plaintiffs alleged negligence relating to a data breach involving customers who booked flights or used the chat services. *Id*. at *2−3. The court granted the vendor's motion to dismiss and held that ADA preemption can apply to an airline vendor, including one that does not exclusively provide services to airlines. *Id*. at *9. "[I]t is irrelevant that [the vendor] offers services to [the airline] and numerous other companies. Plaintiffs' claims are still preempted to the extent the services offered by [the vendor] relate to [the airline's] 'rates, routes, or services.'" *Id*. Because the plaintiffs' claims against the vendor related to the airline's "sales and support" services, they were preempted. *Id*.

Plaintiffs' claims against CrowdStrike are like those in *Pica* and *In re American Airlines, Inc*. and "relate to" airline services, despite CrowdStrike providing cybersecurity services in other sectors as well as to airlines. *See Pica*, 2019 WL 1598761, at *9 ("Plaintiffs cite to no authority—nor can the Court locate any—suggesting that ADA preemption applies to agents of airlines only where those agents provided services exclusively to airlines. In fact, many other courts have concluded just the opposite."); *see also*

Gordon v. Amadeus IT Grp., S.A., 194 F. Supp. 3d 236, 246 (S.D.N.Y. 2016) (holding ADA preempted airline ticket purchasers' state-law claims against non-airline technology providers). Indeed, Plaintiffs allege CrowdStrike's cybersecurity systems "affected many separate [airline] systems, such as those used for calculating aircraft weight, checking in customers, and phone systems in [airline] call centers." (Am. Compl., Dkt. 23, at 38). And, as described above, Plaintiffs seek damages relating to their receipt of airline services, including delayed or cancelled flights, along with compensation for hotel, transportation, and other expenses allegedly incurred because of their cancelled or delayed flights. The Court finds that the ADA preempts Plaintiffs' state-law claims against CrowdStrike, as a cybersecurity firm whose functions at issue here relate to airline services.

Next, Plaintiffs' claims are also preempted because they would affect airline regulation and have a "significant effect" on airline services. The Fifth Circuit in *Hodges* explained that state tort law claims are preempted by the ADA when they would have a "forbidden significant effect" on airline rates, routes, or services contrary to the purpose of the ADA. *Hodges*, 44 F.3d at 339. While the Fifth Circuit did not define the term specifically, it made clear that state-law claims create significant effects when they "result in significant de facto regulation of airline . . . practices." *Id.* In *Witty v. Delta Air Lines, Inc.*, it also elaborated that a significant effect arises where application of state law could produce an "economic effect on [airline] prices." 366 F.3d 380, 383 (5th Cir. 2004). Courts have also found preemption based on significant effects where state laws could "effectively dictate how [airlines] manage personal information collected from customers to facilitate the ticketing and reservation functions that are integral to the operation of a commercial airline." *In re Am. Airlines, Inc., Priv. Litig.*, 370 F. Supp. 2d at 564. Another court has explained that laws are preempted when they "substitute[] state law for market forces in direct contravention of the goal of deregulation" and "require[] the airline to offer services significantly different than what the market might dictate." *A.C.L. Computs. & Software, Inc. v. Fed. Express Corp.*, No. 15-cv-04202-HSG, 2016 WL 946127, at *2 (N.D. Cal. Mar. 14, 2016).

Here, the Court finds Plaintiffs' claims would have such a significant effect on airline services. Plaintiffs seek to impose tort liability on an airline cybersecurity vendor for nationwide damages related to air travel disruptions. The Court concludes that the airlines would experience significant effects from the enforcement of state tort law in this manner on CrowdStrike, akin to federal regulation, because cybersecurity vendors would have an incentive to change their practices and services for airlines specifically. The vendors would, if their potential liability in case of errors in the context of airlines extended to disruptions of airline services, also likely have a strong incentive to charge more for their services to offset that risk of liability. This would, in turn, have a significant effect on airline services and could also have an economic effect on airlines.

The Fifth Circuit has recognized one additional distinction: personal injury claims "caused by the operation and maintenance of aircraft," and not other airline services, are not preempted. *See Hodges*, 44 F.3d at 336 ("Neither the ADA nor its legislative history indicates that Congress intended to displace the application of state tort law to personal physical injury inflicted by aircraft operations, or that

Congress even considered such preemption."); *Witty*, 366 F.3d at 382–83 (holding that the ADA preempted passenger personal injury claim arising from blood clot caused by insufficient leg room because requiring airlines to provide more leg room relates to airline prices, not the operation and maintenance of the aircraft); *see also Day v. SkyWest Airlines*, 45 F.4th 1181, 1189 (10th Cir. 2022) (denying that the ADA preempted personal injury claims and noting the difference between these claims and claims related to economic competition); *Charas v. TWA*, 160 F.3d 1259, 1266 (9th Cir. 1998) (same). In other words, "everyday personal injury claims" resulting from aircraft operation or maintenance are not preempted, and claims that have an impact on "future service offerings," are. *Tobin v. Fed. Express Corp.*, 775 F.3d 448, 455–56 (1st Cir. 2014); *see also Malik v. Cont'l Airlines Inc.,* 305 F. App'x 165, 169 (5th Cir. Nov. 10, 2008) (holding that the ADA preempted property damage claims because they related to airline personnel's mishandling of her bags, "not damage from the way in which the plane was flown"); *In re Air Disaster*, 819 F. Supp. 1352, 1363 (E.D. Mich. 1993) (finding plaintiffs' negligence claims against airline relating to an airplane crash not preempted). That is because there is a separate federal statute requiring airlines to carry personal injury insurance. Congress specifically requires air carriers to 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." *Day*, 45 F.4th at 1187 (quoting 49 U.S.C. § 41112(a) (2025)). Plaintiffs do not claim they were injured because of how an aircraft was operated or maintained. Rather, because their claims concern the airlines' services and would have an impact on future service operations, they are preempted.

In arguing that their case is like personal injury cases where courts have not found a forbidden significant effect, Plaintiffs discuss *Day* and *Tobin*. (Pls.' Resp., Dkt. 33, at 13). Taking guidance from these cases, however, the Court finds that Plaintiffs' claims are more like the *Tobin* claims, which were preempted, than the *Day* claims, which were not. In *Day*, a plaintiff brought claims for negligence and breach of contract against an airline for injuries she suffered when an employee had negligently pushed a beverage cart down the aisle of a plane. *Day*, 45 F.4th at 1182−83. The *Day* court held that "a finding in Day's favor would not govern any central matters of [the airline's] services." *Id.* at 1190. In *Tobin*, an air carrier wrongly delivered a package containing marijuana to the plaintiff due to a labeling error at the air carrier, which she argued caused her emotional distress. *Tobin,* 775 F.3d at 449−50. The First Circuit held that the *Tobin* plaintiff's claims were preempted: they related to the air carrier's "package handling, address verification, and delivery procedures." *Id.* at 454. The court then analyzed whether the claims would have a forbidden significant effect on the air carrier, finding that where the claim "could effect fundamental changes in the carrier's current or future service offerings, the plaintiff's claims are preempted by the ADA." *Id.* Like in *Tobin*, Plaintiffs' claims relate to the computer systems and cybersecurity procedures of airlines and the way that airlines, by policy, served customers nationwide in the aftermath of a computer outage, and could have significant effects on airlines.

Finally, the Court notes that Plaintiffs' intended "effect" is to "help[] prevent future mass shutdowns of computer systems across the world." (Pls.' Resp., Dkt. 33, at 13). In other words, Plaintiffs acknowledge their suit could change cybersecurity protocols in airline services or at least is intended to do so. But in the context of airlines, this is the kind of tort claim that is "connected with," and relates to, airline prices, routes, or services. *Morales*, 504 U.S. at 383; 49 U.S.C. § 41713(b)(1) (2025). Plaintiffs' proposed application of state tort law could either "interfere[] with uniform national policies regarding airline prices, routes, or services" or have "economic effects that effectively limit airlines' choices regarding their prices, routes, and services." *Day*, 45 F.4th at 1186. For the reasons described above, the Court concludes that the ADA preempts Plaintiffs' claims and Defendants' Motion to Dismiss should be granted.

IV. CONCLUSION

For these reasons, **IT IS ORDERED** that Defendants' Motion to Dismiss, (Dkt. 31), is **GRANTED**.

SIGNED on June 18, 2025.

/s/ Robert Pitman
ROBERT PITMAN
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-50518

Julio Del Rio, *individually and on behalf of all others similarly situated*; Jack Murphy, *individually and on behalf of all others similarly situated*; Steven Bixby, *individually and on behalf of all others similarly situated*; Christopher Harlan; Sara Harlan; Philip Kirby; Jennie Aguayo; Alicia Kirby,

Plaintiffs—Appellants,

versus

CrowdStrike, Incorporated; CrowdStrike Holdings, Incorporated,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:24-CV-881
USDC No. 1:24-CV-954

ON PETITION FOR REHEARING EN BANC

Before RICHMAN, DUNCAN, and OLDHAM, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.