No. 14-801

IN THE

Supreme Court of the United States

PENSKE LOGISTICS, LLC,
AND PENSKE TRUCK LEASING CO., L.P.,
Petitioners,

v.

MICKEY LEE DILTS, RAY RIOS, AND DONNY DUSHAJ,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* TRUCK RENTING AND LEASING ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Truck Renting and Leasing Association ("TRALA") is a voluntary, not-for-profit national trade association, founded in 1978, that focuses on providing a uniform voice for the trucking and leasing industry. TRALA's members engage primarily in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. Its membership also includes more than one hundred supplier member-companies that offer equipment, products, and services to TRALA leasing company members.

Some TRALA members have motor carrier operations. These TRALA members' prices, routes, and services are directly impacted by mandatory compliance with California's Mandatory Break Rules. Other TRALA members are leasing companies that routinely must reposition lease or rental vehicles within California, from within California to another State, or from within another State to California. Repositioning often requires the services of the TRALA members' employee-drivers. When these drivers cross State lines into California, they are subject to the California Mandatory Break Rules.

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[1] Pursuant to S. Ct. R. 37.2, TRALA notified counsel of record for the parties of its intent to file an amicus brief at least 10 days prior to its due date for this brief. Counsel for all parties have consented to this filing. Pursuant to S. Ct. R. 37.6, TRALA affirms that the brief was not authored in whole or in part by counsel for a party and that none of the parties or their counsel, nor any other person or entity other than *amicus*, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Some TRALA members operate fleets of heavy-vehicle tow truck and other vehicles used to perform repair and maintenance services on the commercial motor vehicles leased to motor carrier-customers. These maintenance vehicles may be asked to respond to highway accidents or breakdowns on an emergency basis. Compliance with California's Mandatory Break Rules limits their ability to respond and potentially poses safety concerns.

Given TRALA's extensive interest in national uniformity in trucking regulations, it respectfully submits this brief to provide further information about the impact of the California rules in question and urge review of the Ninth Circuit's decision below.

SUMMARY OF ARGUMENT

The decision below drastically narrows the preemption provision in the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1), in a manner inconsistent with prior decisions of this Court and the application of the same language by other Circuits. *See* Pet. at 12-22. This Court's review is necessary to correct the Ninth Circuit's reading of the relevant statutory language, and to ensure that Congress's goal of a uniform rule for motor carriers is not frustrated by a patchwork of meal and break regulations that vary from state-to-state.

This case raises an issue of great national importance, because the Ninth Circuit's decision substantially understated the practical impact of the Mandatory Break Rules on the prices, services, and routes of motor carriers. California's regulations directly relate to motor carriers' services by dictating

times when no service may be provided, and by reducing the amount of time an employee may work during a shift. They affect routes by requiring drivers to deviate from routes in order to find a safe and lawful stopping place. And they impact prices by requiring employers to spend more on labor and to reallocate resources in order to provide the same level of service.

The Ninth Circuit supported its crabbed reading of the preemptive language of the FAAAA by adopting several legal approaches that are inconsistent with this Court's precedent. First, the Ninth Circuit relied—as it has in other cases reversed by this Court—on the so-called "presumption against preemption," ignoring the fact that any such presumption must yield to the broad language Congress purposefully chose. Second, the Ninth Circuit imposed a heightened standard for finding preemption because California's Mandatory Break Rules are generally applicable to all industries, and not specifically aimed at motor carriers. This Court, however, has repeatedly invalidated generally applicable laws when their application encroaches on an area the federal government has reserved to itself. Finally, the Ninth Circuit accorded significant legal weight to the fact that the Respondents are short-haul, intrastate motor carriers—ignoring Congress's expressed intent to exclude the motor carrier industry from the scope of any state regulations related to prices, services and routes, even when those regulations governed only intrastate transportation. This Court's review is necessary to restore the uniformity Congress intended for the regulation of the prices, services, and routes of motor carriers.

ARGUMENT

I. THE BROAD LANGUAGE OF THE FAAAA'S PREEMPTION PROVISION ADVANCES CONGRESS'S GOAL THAT MOTOR CARRIERS FACE A UNIFORM SET OF NATIONAL REGULATIONS.

This case turns on the meaning of the preemption provision in the FAAAA. As with all questions of statutory interpretation, courts are to "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose[.]" *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (quoting *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57 (1990)). In this case, the relevant preemptive language is unmistakably and purposefully broad:

> 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 any motor carrier . . ."

49 U.S.C. § 14501(c)(1).

This court has repeatedly recognized that "[t]he ordinary meaning of these words is a broad one . . . and the words thus express a broad pre-emptive purpose." *Morales*, 504 U.S. at 383 (interpreting the preemptive scope of the Federal Aviation Act of 1958); *see also Pilot Life Ins. Co. v. Dedeaux*, 481 U. S. 41, 47 (1987) (noting the "expansive sweep" of a similar provision in the Employee Retirement Income Security Act of 1974). Congress was fully aware of these decisions when it drafted the FAAAA, and it specifically intended to achieve the maximum preemptive effect on statutes that "related to" motor

carriers' prices, routes and service. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008); *see also id.* at 377 (Ginsburg, J., concurring) (noting "[t]he breadth of FAAAA's preemption language").

Indeed, both the purpose and structure of the statute confirm Congress was determined to prevent states from undermining the national decision to deregulate the trucking industry. *See* H.R. REP. NO. 103-677, at 39 (1994) (Conf. Rep.) ("Congress finds and declares that the regulation of intrastate transportation of property by the States has imposed an unreasonable burden on interstate commerce; impeded the free flow of trade, traffic and transportation of interstate commerce; and placed an unreasonable cost on the American consumers; and certain aspects of the State regulatory process should be preempted."); *Rowe*, 552 U.S. at 371 (quoting *Morales*, 504 U.S. at 378) ("Congress' overarching goal [i]s helping ensure transportation rates, routes and services that reflect 'maximum reliance on competitive market forces,' thereby stimulating 'efficiency, innovation, and low prices,' as well as 'variety' and 'quality.'"). And the statute itself contains a limited number of specific exemptions, which confirm that the general rule of preemption sweeps widely. For example, the statute expressly permits state regulations related to the safety of motor vehicles, route restrictions "based on the size or weight of the motor vehicle or the hazardous nature of the cargo," and insurance requirements. 49 U.S.C. § 14501(c)(2)(A). There would be little need for these specific exemptions if Congress had not intended to broadly preempt most state regulations having any relation to prices, routes or services. Likewise, the statute specifies that it does not apply to "the intrastate transportation of household goods," *id.* §

14501(c)(2)(B); this strongly implies that regulations of intrastate transportation were otherwise intended to be preempted.

Given the broad language, purpose, and structure of the statute, the Ninth Circuit's decision to limit FAAAA preemption only to a state regulation that "*binds* the carrier to a particular price, route or service," Pet. App. at 14a (emphasis original), is unreasonably narrow and inconsistent with Congress's expressed intent. The petition capably describes the extent to which this standard deviates from prior decisions of this Court and the decisions of other Circuits. *See* Pet. at 12-22. Review is warranted on that basis alone.

II. THIS CASE IS OF NATIONAL IMPORTANCE TO PROVIDERS AND RECIPIENTS OF MOTOR CARRIER SERVICES

A. Under Any Standard, The Mandatory Break Rules Substantially Affect The Rates, Routes, And Services Of Motor Carriers

The Ninth Circuit held that the Mandatory Break Rules were not preempted the FAAAA because they "do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly." Pet. App. at 17a. The Ninth Circuit determined that the Mandatory Break Rules directly affected only individual drivers, and that motor carriers could accommodate those requirements without having any material effect on prices, services, or routes. Pet. App. at 20a. This analysis "disregard[ed] the real-world consequences" of the Manda-

tory Break Rules, and "g[a]ve dispositive effect to the form of a clear intrusion into a federally regulated industry." *See Nw., Inc. v. Ginsberg*, --- U.S. ---, 134 S. Ct. 1422, 1430 (2014) (quoting *Brown v. United Airlines, Inc.*, 720 F.3d 60, 66 (1st Cir. 2013)).

For example, in most states, including California, a driver may not legally pull over to the side of the highway and park. Rather, a driver must exit the highway and locate a stopping place that safely and lawfully accommodates the vehicle. California's Mandatory Break Rules necessarily impact routes because they require a driver to depart from a planned route, drive to an appropriate stopping area, and take the meal or rest break, before driving back to the planned route. This direct requirement to alter a route brings the Mandatory Break Rules within the broad sweep of the FAAAA's preemption provision.[2]

But the impact of the Mandatory Break Rules on routes goes further. The driver must locate safe and legal parking[3] during specific time periods as di-

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[2] The Ninth Circuit justified its minimization of this effect by arguing that a diversion of a route does not count for FAAAA purposes unless it affects the *destination*—a distinction utterly unsupported by the statutory text or this Court's opinions. Indeed, such a rule would permit all sorts of substantial regulatory diversions and delays of motor carriers in a manner that Congress could not possibly have permitted to let stand when it chose the broadest possible language for the FAAAA's preemption provision.

[3] Such areas are not always available; there is a national shortage of overnight truck stops, a situation likely to get worse as the decrease in oil prices lessens the cost of motor carrier transport. *See* Betsy Morris, *Too Many Trucks, Too Little Parking*, Wall Street Journal, Jan. 20, 2015,

(footnote continued on next page)

rected by the Mandatory Break Rules. Only routes that provide commercial parking areas at sufficient intervals may be utilized, which means there are fewer routes available. Drivers may have to take routes that are significantly longer in favor of more direct routes that lack adequate stopping locations. Drivers may also have to circumvent congested metropolitan areas (of which California has more than a few) entirely, for fear of being stranded in traffic without access to parking at the required times.

Moreover, even if stopping locations are preplanned into routes, there is no guarantee that there will be available space at a given location for a rest break. According to a 2007 study, California leads the nation in the shortage of overall private and public commercial vehicle parking. Demand exceeded capacity at *all* public rest areas and by 88% at private rest areas on the 34 corridors in California bearing the highest volumes of truck travel.[4] Locating alternatives to planned stops where space is unavailable results in even greater deviation from planned routes.

In a twelve hour shift, a driver must repeat this process *five times* in order to comply with the Man-

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http://on.wsj.com/1yIeS7g) (describing robberies, assaults and murders of truck drivers who are unable to find safe overnight rest stops).

[4] Caroline J. Rodier & Susan A. Shaheen, *Commercial Vehicle Parking In California: Exploratory Evaluation of the Problem and Possible Technology-Based Solutions*, California PATH Program, Institute of Transportation Studies, University of California, Berkeley, 3 (August 2007), http://www.path.berkeley.edu/sites/default/files/publications/PRR-2007-11.pdf.

datory Break Rules, and break for a minimum of 90 minutes. Because breaks do not begin until the driver locates an adequate stopping place, the time spent deviating from the original route to locate a stopping place is much higher. The Mandatory Break Rules therefore impact service by reducing a driver's productive time by well in excess of 90 minutes per shift, and by dictating specific times during which *no* service may be provided. By increasing the time required to complete a service or delivery, the rules prescribe that less total service can be provided. For certain longer hauls with tighter time frames, like same-day pick-ups and deliveries over greater distances, the ability to travel less distance in the same amount of time may make timely delivery impossible and result in discontinuance of services.

This problem is compounded when considering motor carrier schedules. Many customers depend on precision in delivery times. The Mandatory Break Rules impose "rigid . . . requirements," Pet. App. at 42a, and wreak havoc on schedules by directing "exactly when and for exactly how long" employees must take breaks, *id.* 45a. For example, if an employee has been driving for four hours and is minutes away from making an on-time, scheduled delivery, the employer may not require that he delay the mandated 10-minute rest break in order to make the delivery on time.[5] Instead, the driver must first

[5] California law requires that employers completely relieve workers of all duties, including non-driving duties, during each of these break periods. This means that employers may not utilize non-driving time, like waiting for the truck to be loaded or unloaded, to accommodate scheduling of break periods.

locate a stopping area and then take the break. These constraints are certainly not the product of "competitive market forces," *Rowe*, 552 U.S. at 371, and thus fall within the scope of laws that Congress intended to preempt.

The Mandatory Break Rules also threaten to restrict Rental Fleet and emergency breakdown services offered by some TRALA members to leasing customers. Where the location of a breakdown is not knowable in advance of the need for service, the route from dispatch to stranded customer may not be pre-planned, or the safest and most expeditious route may not offer access to sufficient stopping locations. These conditions may limit the ability to provide emergency services or may create safety problems with response time that impact the quality of the service.

The Ninth Circuit suggested that employers may avoid many of the delays associated with meal and rest breaks by, among other things, sending two drivers per trip instead of one. This buddy system ignores the California law that workers must be free to leave the premises during a break. *Brinker Rest. Corp. v. Superior Court*, 273 P.3d 513, 533-34 (Cal. 2012). Even if employers send two drivers for each trip, rest breaks cannot be avoided because the on-break worker must be free to leave the truck. In any event, doubling labor costs in a field with narrow margins would often mean discontinuing services. Certainly, California could not directly require motor carriers to use a specific number of drivers for each delivery. *Cf. Rowe*, 552 U.S. at 373 (rejecting state requirement that "carriers provide a special checking system" because "similar, state requirements could easily lead to a patchwork of state service-

determining laws, rules, and regulations"). And this Court's precedents make clear that FAAAA preemption bars *indirect* regulations related to services as equally as it bars *direct* regulations. *Id.* at 370 (quoting *Morales*, 504 U.S. at 386).

Finally, impacts to routes and services necessarily impact prices. Carriers must hire additional drivers or reallocate resources in order to maintain service levels. Route deviations impair the ability to optimize refueling locations. More frequent starting and stopping is inefficient for fuel burning, which increases fuel costs. It causes more wear and tear on trucks, and increases the incidence and cost of maintenance. In a competitive field, increased costs necessarily result in increased rates.

B. The Size and Importance of California and the Neighboring States Weigh In Favor of Review of the Ninth Circuit's Approach to FAAAA Preemption.

California has over 50,000 lane miles of state highways and another 27,000 lane miles of federal roadways.[6] The Ninth Circuit encompasses the entire west coast and the seven most westerly contiguous states, many of which are of a similar geographic scale. It contains major urban centers including Los Angeles, San Francisco, Las Vegas, Phoenix, Portland, and Seattle, as well as a variety of large and small commercial ports that receive cargo daily for intrastate (as well as interstate) distribution.

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[6] State of California Dep't of Trans., *2010 California Public Road Data, Table 1 (*October 2011), http://www.dot.ca.gov/hq/tsip/hpms/hpmslibrary/hpmspdf/2010PRD.pdf.

In all of these states, the imposition of Mandatory Break Rules like California's would seriously affect the prices, services, and routes of motor carriers. Driving between San Diego and San Francisco, for example, takes a minimum of eight hours, triggering the requirement of three breaks under California's Mandatory Break Rules. If similar rules applied in other states, rest breaks, in addition to those required by Federal rules, would be obligatory for trips from Reno to Las Vegas, Nevada (7 hours); Flagstaff to Tucson, Arizona (4 hours); and Boise to Idaho Falls, Idaho (4 hours). Same-day, round-trip delivery service, like trips between Missoula and Billings, Montana (10 hours), and Spokane and Seattle, Washington (9 hours), may have to be discontinued entirely if the service cannot be performed within the allowable service time, while accommodating for stops at adequate parking locations.

III. THE NINTH CIRCUIT JUSTIFIED ITS NARROW READING OF THE FAAAA'S PREEMPTION PROVISION USING LEGAL PRINCIPLES THAT CONFLICT WITH THE DECISIONS OF THIS COURT

To support its narrow reading and avoid the full scope of the plain language Congress used in § 14501(c)(1), the Ninth Circuit relied on several legal principles that themselves are contrary to this Court's preemption law: (1) it emphasized the "presumption against preemption" over the plain meaning of the statutory text; (2) it employed a heightened standard for preemption because the Mandatory Break Rules apply generally and do not target a specific industry; and (3) it emphasized the intrastate nature of the Respondents' activities and ignored the threat to national uniformity. The Ninth

Circuit's misapplication of these legal principles further weighs in favor of review.

A. The Ninth Circuit Incorrectly Relied Upon the "Presumption against Preemption" Over the Statutory Text.

At the outset of its analysis, even as it acknowledged the FAAAA's breadth, the Ninth Circuit took the position that "the scope of the [statute's] preemption must be tempered by the presumption against the preemption of state police power regulations." Pet. App. at 7a. It also viewed this presumption as the "begin[ing]" of the preemption analysis. *Id.* (citing *Tillison v. Gregoire*, 424 F.3d 1093, 1098 (9th Cir. 2005)).

While this Court's members have expressed sometimes conflicting views as to the extent the presumption should *ever* apply in interpreting an express preemption provision, *see, e.g., Altria Grp., Inc. v. Good*, 555 U.S. 70, 93-94 (2008) (Thomas, J., dissenting), there is broad agreement that invoking the presumption is typically unnecessary "in giving force to the plain terms of the" relevant statute, *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519, 534 (2009). In this case, the presumption cannot override the plain language of the statute, which this Court has emphasized is where the analysis actually "begin[s]." *Morales*, 504 U.S. at 383. And this Court already has held that the relevant statutory language "express[es] a broad pre-emptive purpose." *Id.* at 383-84. Indeed, in *Morales,* it was the *dissent* that relied in part on the presumption against preemption, *id.* at 420-21 (Stevens, J., dissenting), a reliance that the majority plainly found incompatible with the actual words Congress used. Given the fact that the FAAAA's preemption provision was intentionally

written to track *Morales*, the presumption similarly has no useful work to do here.

Moreover, this Court in recent years has repeatedly stepped in to correct the Ninth Circuit's overreliance on the "presumption against preemption," particularly in express preemption cases like this one. Just last term, this Court unanimously reversed a Ninth Circuit decision invoking the presumption, and ruled that the preemptive language in the Airline Deregulation Act—the model for the FAAAA's preemption language—compelled the conclusion that common law contractual duties could not be imposed on air carriers' contracts with their passengers. *See Ginsberg*, 134 S. Ct. 1422. Likewise, in *Nat'l Meat Ass'n v. Harris*, --- U.S. ---, 132 S. Ct. 965 (2012), this Court unanimously reversed a Ninth Circuit opinion relying heavily on the presumption and held that the plain language of the Federal Meat Inspection Act "sweeps widely" and preempted California state law. *See also Engine Mfrs. Ass'n et al. v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246 (2004) (reversing a Ninth Circuit decision relying on the presumption to find no preemption of state motor vehicle emissions restrictions under the Clean Air Act). This case underscores the need for this Court to once again correct the Ninth Circuit's determination to use the "presumption against preemption" as a basis to give even the broadest "express preemption statutory provisions . . . [a] narrow interpretation." *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1060 (9th Cir. 2009).

B. The Ninth Circuit Wrongly Employed A Heightened Standard for Preemption of Laws of General Applicability.

In further efforts to minimize the FAAAA's preemptive reach, the Ninth Circuit emphasized that the Mandatory Break Rules are "generally applicable background regulations," Pet. App. at 15a, which are "broad law[s] applying to hundreds of different industries" with no other "forbidden connection with prices[, routes,] and services," *id.* at 16a (quoting *Air Transp. Ass'n of Am. v. City of San Francisco*, 266 F.3d 1064, 1072 (9th Cir. 2011)). Such general regulations, the Ninth Circuit held, are not preempted unless they "directly or indirectly, *bind*[] the carrier to a particular price, route or service.'" *Id.* at 14a (emphasis in original) (quoting *Air Transp. Ass'n,* 266 F.3d at 1071).

The use of a heightened preemption standard for generally applicable laws again is contrary to decisions of this Court. Indeed, *Morales* itself involved a law generally applicable to the transportation industry: the consumer protection statutes of numerous states, which were the basis for attempted regulation of airline frequent flier programs. *See Morales*, 504 U.S. at 383. In holding that preemption applied, the Court explicitly rejected any argument based on the generally applicable nature of the underlying regulations: "Besides creating an utterly irrational loophole (there is little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute), this notion similarly ignores the sweep of the 'relating to' language." *Id.* at 386. *See also Ginsberg*, 134 S.Ct. at 1431-32 (finding preemption of rule generally applicable to all con-

tracts). As with its use of the presumption against preemption, the Ninth Circuit's heightened requirement for FAAAA preemption of general laws ignores the plain text Congress enacted: as long as state regulation has "the force or effect of law," and imposes some effect on motor carrier "prices, routes or services," it is preempted.

Any other rule would frustrate Congress's concern about a patchwork of state regulations that disrupted the motor carrier industry. A patchwork of *general* regulations that are applied to motor carriers are no less disruptive to prices, routes, and services than specific regulations related to prices, routes, or services. What matters, at the end of the day, is whether the regulation—general or specific—can be applied in a manner related to prices, routes, or services. This Court should grant the petition to make this point clear to the Ninth Circuit.

C. The Ninth Circuit Mistakenly Focused on The Respondents' Intrastate Transportation Activities.

The Ninth Circuit highlighted the intrastate nature of the services provided by the Respondents in this case as further support for its decision. The opinion below notes that Respondent "drivers work on short-haul routes and work exclusively within the state of California [and] . . . are not covered by other state laws or federal hours-of-service regulations[.] . . . Consequently, Defendants in particular are not confronted with a 'patchwork' of hour and break laws, even a 'patchwork' permissible under the FAAAA." Pet. App. at 18a-19a n.2. *See also id.* at 25a (Zouhary, D.J., concurring) (emphasizing that "this case is *not* about . . . FAAAA preemption in the context of interstate trucking—though one gets the

sense that various *amici* wish it were. On this record, *and in the intrastate context*, California's meal and rest break requirements are not preempted") (second emphasis added). This misguided focus again ignores the express goals of the FAAAA and this Court's prior case law, and thus further supports this Court's review.

There is no doubt that the FAAAA's preemption provision was meant to apply to regulations of purely intrastate transportation. As the District Court noted, Pet. App. at 35a-36a, Congress made express findings that "the regulation of intrastate transportation of property by the States has imposed an unreasonable burden on interstate commerce . . . and certain aspects of the State regulatory process should be preempted." Pub.L. No. 103–305, § 601(a), 108 Stat. 1569, 1605 (1994). Moreover, Congress made two express exemptions that specifically relate to intrastate transportation: one that covers the intrastate transports of household goods, 49 U.S.C. § 14501(c)(2)(B), and one that covers all motor carrier operations within the state of Hawaii, 49 U.S.C. § 14501(c)(4). The enactment of specific exemptions for particular types of intrastate transportation confirms that all other types were included within the scope of the statute. This is why the Court recently (and unanimously) held that motor carrier services provided within the boundaries of *a single California port* were nonetheless subject to FAAAA preemption. *Am. Trucking Ass'ns v. City of Los Angeles,* 133 S.Ct. 2096, 2105 (2013).

In any event, the proper focus in the case is not on the intrastate nature of the Plaintiffs' services, but instead on the effect the Mandatory Break Rules could have on the motor carrier industry as a

whole. A motor carrier operating in California and one other jurisdiction that has not adopted rest break rules is already subject to a patchwork of state regulations—even if individual employees never actually crossed state lines. Contrary to the Ninth Circuit's implication, preemption does not depend upon the enactment of a second, conflicting regime; California's incursion into reserved federal territory is all that matters. *See, e.g.*, *Morales*, 504 U.S. at 386-87 (rejecting argument that a conflict is required before preemption takes place, especially where "[n]othing in the language of § 1305(a)(1) suggests that its 'relating to' pre-emption is limited to *inconsistent* state regulation[.]").

Given the serious potential for interference with motor carrier operations by the Ninth Circuit's mistaken approach to FAAAA preemption, this Court should step in to correct the numerous errors below and give § 14501(c)(1) the effect Congress intended.

CONCLUSION

Petitioners' petition for writ of *certiorari* should be granted.

Respectfully submitted,

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