No. 22-1006

IN THE

Supreme Court of the United States

PRIME INSURANCE CO.,
Petitioner,

v.

DARNELL WRIGHT,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

DAVID A. SINGLETON
Counsel of Record
BLACKBURN ROMEY
4203 W. Jefferson Blvd.
Fort Wayne, IN 46804
(260) 422-4400
dsingleton@blackburnromey.com

ADINA H. ROSENBAUM
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Respondent

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QUESTION PRESENTED

Under the MCS-90 insurance endorsement, companies that insure motor carriers agree to pay final judgments against the insured for public liability arising out of the negligent use of motor vehicles that are subject to the Motor Carrier Act's financial responsibility requirements. Those requirements provide that motor carriers must maintain minimum levels of financial responsibility to cover liability "for the transportation of property by motor carrier or motor private carrier (as such terms are defined in section 13102 of [Title 49]) in the United States between a place in a State and … a place in another State." 49 U.S.C. § 31139(b)(1).

In this case, Decardo Humphrey, a truck driver, drove from South Holland, Illinois, where all his trips began, to Fort Wayne, Indiana. After he dropped off a load, his dispatcher directed him to pick up another load at another site in Fort Wayne. While driving from the drop-off site to the pickup site, Mr. Humphrey's truck collided with a car. He then picked up the load and brought it back to Illinois. The question presented is:

Whether the Seventh Circuit correctly held that Mr. Humphrey was engaged in the interstate transportation of property at the time of the crash and, therefore, that the MCS-90 endorsement applied to a judgment for personal injuries arising out of the crash.

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INTRODUCTION

In November 2013, Decardo Humphrey, a truck driver for Riteway Trucking, drove a truck from South Holland, Illinois, where all his trips began, to Fort Wayne, Indiana. After Mr. Humphrey dropped off a load, Riteway's dispatcher in Illinois directed him to pick up another load at another site in Fort Wayne. While driving to the pickup site, Mr. Humphrey's truck collided with a car driven by respondent Darnell Wright. Mr. Humphrey subsequently picked up the load and brought it back to Illinois.

Mr. Wright obtained a judgment against Riteway for damages for injuries he sustained in the crash. Petitioner Prime Insurance Company, Riteway's insurer, then filed this case, seeking a declaration that it was not liable for the judgment. The coverage issue turns on an insurance endorsement called the MCS-90 endorsement. In that endorsement, Prime agreed to pay any judgment for public liability against Riteway arising from the negligent use of motor vehicles subject to the Motor Carrier Act's financial responsibility provisions. Those provisions, in turn, require motor carriers to maintain minimum levels of financial responsibility to cover liability "for the transportation of property by motor carrier or motor private carrier (as such terms are defined in section 13102 of [Title 49]) … between a place in a State and … a place in another State." 49 U.S.C. § 31139(b)(1).

The district court granted summary judgment for Mr. Wright, and the Seventh Circuit affirmed. The court of appeals held that the relevant question in determining whether travel is subject to section 31139(b)(1), and thus whether the MCS-90 endorsement applies, is whether the collision occurred

during the interstate transportation of property. Looking at the definition of "transportation" in 49 U.S.C. § 13102—which is directly referenced in section 31139(b)(1), and which explains that "transportation" includes "services related" to the movement of property, including arranging for, receipt, delivery, and interchange of property, *id.* § 13012(23)(B)—the court held that the "answer to that question is 'yes.'" Pet. App. 6a.

Prime seeks this Court's review, primarily arguing that the Seventh Circuit's decision implicates a disagreement among two other courts of appeals and three state supreme courts on how to interpret section 31139(b)(1)'s reference to the transportation of property between states. In so doing, however, Prime blatantly mischaracterizes the holdings of the Fifth Circuit and Connecticut Supreme Court. The cases it cites from the Eleventh Circuit and Pennsylvania Supreme Court address a question not presented in this case. And the case it cites from the Virginia Supreme Court does not interpret the relevant phrase from section 31139(b)(1). Prime provides no reason to think that any of these courts would disagree with the Seventh Circuit that the MCS-90 endorsement applies here. And, notably, Prime does not identify any case, from any court, agreeing with its position that a truck is engaged in the interstate transportation of property only during the moments when it is loaded with freight and moving from one state to another.

Apart from the decision below, Prime points to no case that addresses whether a truck was engaged in the interstate transportation of property under circumstances such as those here, where Mr.

Humphrey moved property across state lines and was engaged in a service related to that movement at the time of the crash. There is no need for this Court to grant review to consider a question that rarely arises. Moreover, answering the question presented in the petition would not necessarily resolve whether the MCS-90 endorsement applies in the rare future case that arises under similar circumstances.

The Seventh Circuit correctly held that Mr. Humphrey was engaged in the interstate transportation of property at the time of the crash. When the crash occurred, Mr. Humphrey was in the middle of an interstate journey to deliver property: He had already traveled from Illinois to Indiana and dropped off a load, and he was en route to pick up another load, which he then transported back to Illinois. The travel to pick up the new load was a service related to the movement of the property and an inherent part of the transportation of the goods between states. As the Seventh Circuit noted, "loads must be picked up before they can be delivered." Pet. App. 6a.

The petition for certiorari should be denied.

STATEMENT OF THE CASE

A. Unless they post a surety bond or have federal authorization to self-insure, interstate motor carriers must have an insurance policy with an MCS-90 endorsement. *See* 49 C.F.R. § 387.7(a), (d). The MCS-90 endorsement makes the insurance company responsible for certain payments to injured parties even when the company is not required to defend or indemnify the motor carrier. Pet. App. 2a.

Specifically, in the MCS-90 endorsement, the insurance company "agrees to pay … any final

judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980." *Id.* at 3a. The agreement to pay applies "regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere." *Id.* No limitation in the policy or any endorsement, and no violation of the policy or any endorsement, "shall relieve the company from liability or from the payment of any final judgment" covered by the endorsement. *Id.*

The MCS-90 endorsement covers motor vehicles that are "subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980." *Id.* The relevant financial responsibility requirements are currently codified in 49 U.S.C. § 31139(b)(1), which provides:

> The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property by motor carrier or motor private carrier (as such terms are defined in section 13102 of this title) in the United States between a place in a State and—
>
> (A) a place in another State;
>
> (B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

B. Decardo Humphrey was a truck driver for Riteway Trucking, an Illinois-based company. Pet. App. 1a, 31a. Mr. Humphrey began every trip at Riteway's yard in South Holland, Illinois. *Id.* at 1a, 15a, 30a. Riteway would tell him where to pick up and drop off loads, often sending him to other states. *Id.* at 1a, 30a. Regardless of where Mr. Humphrey went during a trip, or how many stops he made, he always returned to Illinois at the end. *Id.* at 1a, 30a.

On November 12, 2013, Mr. Humphrey dropped off a load in Fort Wayne, Indiana. *Id.* at 1a, 7a. A Riteway dispatcher then sent him to pick up a load at another site in Fort Wayne. *Id.* at 2a. While he was driving to pick up the load, when he was just down the street from the pickup site, Mr. Humphrey's truck crashed with a car driven by respondent Darnell Wright. *Id.* at 2a, 14a. After cooperating with the police and Mr. Wright, Mr. Humphrey continued on his way, picking up the load and driving it to Illinois. *Id.* at 2a.

Mr. Wright filed a state-court lawsuit against Riteway and related defendants, seeking damages for injuries that he sustained in the crash. Riteway did not answer the complaint, and Mr. Wright obtained a default judgment against it. *Id.* at 7a–8a. Although Prime, Riteway's insurer, had intervened in the state-court case and had notice of the hearing on the motion for a default judgment, it did not appear at that hearing. *Id.* at 8a & n.1.

In the meantime, Prime had filed a federal-court lawsuit in the Northern District of Indiana, seeking a declaration that it did not have any duty to defend or provide coverage for Riteway or any other defendant in the state-court case. *Id.* at 8a. The court ultimately

held that Riteway failed to meet its obligations under its insurance policy, that Prime did not owe a duty to defend or indemnify Riteway, and that Riteway would be liable to Prime for any payments issued under the MCS-90 endorsement. *Id*. at 8a–9a. The court did not address whether the MCS-90 endorsement would require Prime to pay the default judgment against Riteway. *Id*. at 9a.

The state trial court subsequently denied Prime's motion to set aside the default judgment, the Indiana Court of Appeals affirmed the trial court's judgment, and the Indiana Supreme Court denied review. *See Prime Ins. Co. v. Wright*, 133 N.E.3d 749, 754 (Ind. Ct. App. 2019), *trans. denied*, 141 N.E.3d 811 (Ind. 2020).

In November 2019, Prime filed this case in the Northern District of Indiana, seeking a declaration that it is not responsible under the MCS-90 endorsement for payment of the judgment entered in the state-court case. Pet. App. 9a. Prime claimed that the endorsement did not apply because Mr. Humphrey was not engaged in the transportation of property in interstate commerce at the time of the crash. *Id*. at 10a.

The district court granted summary judgment for Mr. Wright. The court determined that Mr. Humphrey "was engaged in the transportation of property" when he collided with Mr. Wright's car. *Id*. at 30a. Although his truck was empty at the exact moment of the crash, he was driving to pick up a load to continue his trip, not driving for personal purposes. *Id*. at 29a. Moreover, the court explained that "Humphrey was engaged in the transportation of property *in interstate commerce* when the accident with Wright occurred." *Id*. at 33a (emphasis added;

citation omitted). "He began his trip in South Holland, Illinois, and transported property to Indiana at the direction of Riteway. He had delivered property to a location in Indiana and was en route to pick up another load, again at the direction of Riteway, so he would not be hauling an empty trailer back to Illinois." *Id.* And "he returned to South Holland after the accident, transporting property, all at the direction of Riteway." *Id.* Because Mr. Humphrey "was engaged in the transportation of property in interstate commerce at the time of the accident," the court held that the MCS-90 endorsement applies. *Id.* at 35a.

The Seventh Circuit affirmed. The court of appeals noted that 49 U.S.C. § 13102—to which section 31139(b)(1) refers—defines "transportation" to include "services related to [the movement of property], including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property." *Id.* § 13102(23)(B). "This tells us," the court explained, "that carrying freight at the instant of a collision is *not* essential to 'transportation.'" Pet. App. 5a.

The court concluded that Mr. Humphrey "was engaged in interstate freight transportation" when the collision occurred. *Id.* at 6a. "He set out from Illinois to Indiana, where he dropped some freight and picked up more, which he returned to Illinois," the court explained. *Id.* "During this journey his truck and Wright's car collided. The brief time that the truck was empty in Indiana is easily described as movement arranging for the interchange of property: loads must be picked up before they can be delivered." *Id.*

Because the only relevant question was "whether the collision occurred during an interstate journey to deliver freight or one of the steps mentioned in § 13102(23)(B)," and the "answer to that question [was] 'yes,'" the court held that "the Endorsement applies." *Id.*

REASONS FOR DENYING THE WRIT

I. There is no conflict over whether a truck is engaged in the interstate transportation of property under the circumstances here.

Prime's main argument for certiorari is the claim that the circuit courts and state supreme courts are divided over how to determine when a truck is engaged in the transportation of property from one state to another for purposes of section 31139(b)(1). Prime's claim, however, rests on a mischaracterization of the holdings of the two courts in which it claims it would prevail and the citation of cases from other courts that either address a question not presented here or do not interpret section 31139(b)(1). Prime discusses no case addressing whether a truck is engaged in the interstate transportation of property in circumstances analogous to those here, and it provides no reason to think that any of the courts it discusses would hold that Mr. Humphrey was not engaged in the interstate transportation of property at the time of the crash.

A. Contrary to Prime's claims, *see*, *e.g.*, Pet. 4, neither the Fifth Circuit nor the Connecticut Supreme Court holds that a truck is engaged in the interstate transportation of property only when it is loaded with freight and moving from one state to another. Indeed, Prime does not cite *any* case from *any* court holding that a truck is engaged in the interstate

transportation of property only during those moments.

In the Fifth Circuit case on which Prime relies, *Canal Insurance Co. v. Coleman*, 625 F.3d 244 (5th Cir. 2010), the court considered whether the MCS-90 endorsement covered an accident between a car and a "bobtail" truck—a truck without a trailer attached—that occurred as the truck was being backed into the trucker's driveway after the trucker returned home from work. The court determined that the MCS-90 endorsement "covers vehicles only when they are presently engaged in the transportation of property in interstate commerce." *Id.* at 249. Because the parties had stipulated that the trucker was not engaged in the transportation of property at the time of the accident, the court held that the MCS-90 endorsement did not apply. *Id.* at 247.

Because of the stipulation, *Coleman* took "no position as to whether the liability in th[e] case was 'for the transportation of property.'" *Id.* at 245. The court did, however, provide guidance on how to determine whether a truck was involved in the transportation of property at the time of a crash. The court explained that section 31139(b) "indicates that its terms are to be read as 'defined in section 13102 of this title.'" *Id.* at 252. "Section 13102, in turn," the court continued, "defines 'transportation' quite broadly" to include "'services related to [the] movement [of property], including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.'" *Id.* (quoting 49 U.S.C. § 13102(23)(B)).

Because of "the statute's broad terms," the court stated that it was "at least arguable that," if the parties had not stipulated to the contrary, the trucker's "conduct at the time of the accident could be termed 'transportation of property.'" *Id.* That is, contrary to Prime's claim that the Fifth Circuit held that a truck is not engaged in the transportation of property unless it is loaded with freight, the Fifth Circuit took no position on whether the truck in *Coleman*—which did not even have a trailer attached to it—was engaged in the transportation of property when the crash occurred. Indeed, underscoring that the Fifth Circuit did *not* hold that a truck is engaged in the interstate transportation of property only when it is loaded with freight, the court stated: "[W]e do not hold today that a 'bobtail' truck can never be engaged in the transportation of property." *Id.* at 246 n.1.

The decision below is wholly consistent with *Coleman*. Although the Seventh Circuit read that decision differently, *see* Pet. App. 2a, its decision agrees with the Fifth Circuit's actual analysis of the issue. Like the Fifth Circuit, the Seventh Circuit held that the relevant inquiry is whether the truck was engaged in the interstate transportation of property when the crash occurred. *See id.* at 6a. The Seventh Circuit then went on to consider the question that the Fifth Circuit did not decide—whether the "statutory definition" of transportation in section 13102(23)(B) "reaches this case." *Coleman*, 625 F.3d at 254. Applying the analysis set forth in *Coleman*, the Seventh Circuit determined that Mr. Humphrey was engaged in the interstate transportation of property when the collision occurred. There is no conflict between the Seventh Circuit's decision and *Coleman*.

Likewise, the Seventh Circuit's decision does not conflict with *Martinez v. Empire Fire & Marine Insurance Co.*, 139 A.3d 611 (Conn. 2016), the Connecticut Supreme Court case on which Prime relies. There, the court held—like the Seventh and Fifth Circuits—that the MCS-90 endorsement applies "only to liability arising from the transportation of property in interstate commerce." *Id.* at 613. It then concluded that the trip at issue—a trip from New Haven, Connecticut, to Hamden, Connecticut, to pick up tow truck repair parts and drive them back to New Haven—was not interstate in nature.

Prime claims that *Martinez* held that a truck is only engaged in the interstate transportation of property when it is moving from one state to another at the moment of the crash. *See*, *e.g.*, Pet. 4. To the contrary, the court explicitly recognized that "a trip within only one state may nevertheless be considered interstate in nature if the trip is one leg of a continuous interstate movement of goods." *Martinez*, 139 A.3d at 621. The court determined, however, that the fact that the repair parts would eventually be put in tow trucks that would later cross state lines was not enough to make the trip between New Haven and Hamden, Connecticut, interstate in nature. *Id.* at 622. The court did not address whether a trip would be interstate in nature where, as here, a truck driver drove from one state to another, dropped off a load, and was driving to pick up goods to bring back to the first state when the accident occurred. However, the court explained that the "relevant trip" in *Martinez* "began in New Haven when [the driver] … embarked on his journey to Hamden to retrieve the repair parts … [and] was to terminate when the [driver] returned … [to] New Haven." *Id.* That is, the "relevant trip"

included both the travel to pick up the property and the travel carrying the property. *Id*. The equivalent trip here was unquestionably interstate in nature since it began, at the latest, when Mr. Humphrey set off to pick up the load in Fort Wayne, Indiana, and it ended after he delivered the load in Illinois.

B. The Seventh Circuit's decision also does not conflict with the Eighth Circuit and Pennsylvania Supreme Court decisions relied on by Prime, *Century Indemnity Co. v. Carlson*, 133 F.3d 591 (8th Cir. 1998), and *Progressive Casualty Insurance Co. v. Hoover*, 809 A.2d 353 (Pa. 2002).

In *Century*, the Eighth Circuit considered whether the MCS-90 endorsement applied to liability arising out of a crash that occurred when a truck was carrying corn from a farm in Minnesota to a river terminal in Minnesota that shipped 99 percent of the corn it received to other states. 133 F.3d at 593–94. Examining "the 'essential character' of the shipment from the shipper's intent," and noting that the transportation of goods from the farm to the terminal "was only part of a continuous transportation of the goods out of the State of Minnesota," the court held that "the transportation of corn at the time of the accident constituted interstate transportation" and thus that the MCS-90 endorsement applied. *Id*. at 598, 599 (citation omitted).

In *Progressive*, the Pennsylvania Supreme Court considered whether the MCS-90 endorsement applied to liability arising out of a crash that occurred when a truck was carrying grain from a storage facility in Pennsylvania to a feed mill in another part of Pennsylvania. 809 A.2d at 355–56. The court explained that "transportation of goods within a

single state may be deemed 'interstate' in character when it forms part of a 'practical continuity of movement' across state lines from the point of origin to the final destination." *Id.* at 360 (cleaned up). The "interstate versus intrastate determination," it continued, "hinges upon an assessment of the essential character of the commerce, manifested by the shipper's fixed and persisting intent at the time of the shipment, and ascertained from all of the circumstances attending the transportation." *Id.* Finding the record insufficient to establish the essential character of the shipment, the court remanded to the trial court. *Id.* at 368–69.

Century and *Progressive* thus both address whether a truck that is moving property within a state is nonetheless engaged in the transportation of property in interstate commerce. That question is not presented here, where Mr. Humphrey indisputably moved property across state lines and was engaged in a "service[] related to that movement" at the time of the crash. 49 U.S.C. § 13102(23)(B).

In any event, the outcome of this case would be the same under a test that looked at the essential character of the commerce and the shipper's intent. As the district court explained, under "an 'essential character of the commerce' analysis[] … Humphrey was engaged in the transportation of property in interstate commerce at the time of the accident." Pet. App. 35a. Mr. Humphrey's "trip was specifically arranged by Riteway to occur across state lines, his orders to proceed with the pick up were delivered across state lines by Riteway's dispatch, and the property was arranged to be picked up in Indiana and delivered across state lines in Illinois." *Id.* at 28a.

C. *Lyons v. Lancer Insurance Co.*, 681 F.3d 50 (2d Cir. 2012), also cited by Prime, is likewise inapposite. There, the Second Circuit held that a school bus was being used on a wholly intrastate trip when it picked students up from their junior high school in Yonkers, New York to bring them to other locations in Yonkers, New York. The court explained that the fact that the carrier had an "unrelated contract" to drive senior citizens that day "that would likely involve travel between two places in [New York] over a route passing through" Connecticut did not make the bus's trip interstate, where "no rational juror could find that only a single trip was intended to fulfill both [the carrier's] contract to transport the students after school in Yonkers and its contract to pick up the senior citizens [elsewhere in New York] at 2 p.m." *Id.* at 57, 60. *Lyons* bears no relation to this case, where, at the time of the crash, Mr. Humphrey was driving to pick up a load in Indiana and bring it back to Illinois.

D. Finally, Prime cites *Heron v. Transportation Casualty Insurance Co.*, 650 S.E.2d 699 (Va. 2007). That case, however, does not address when a truck is engaged in the interstate transportation of property.

Heron considered whether the MCS-90 endorsement applied to liability arising from a crash by a truck that was driving in Virginia to pick up mulch to deliver elsewhere in Virginia. The Virginia Supreme Court noted that, in the MCS-90 endorsement, the insurance company agrees to pay "any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of [the Motor Carrier Act]." *Id.* at 702 (quoting the

endorsement). Because the named insured "was the owner of a vehicle that was subject to the financial responsibility requirements of the Motor Carrier Act," the court held that the insurance company was obligated to pay a "judgment for damages resulting from negligence in the operation of that vehicle," regardless of whether the vehicle was operating in interstate or intrastate commerce at the time of the crash. *Id.* "The contract language contains no terms limiting the coverage to the use or operation of the vehicle in interstate commerce," the court explained. *Id.* "[W]e will not read such absent terms into the contract the parties made." *Id.*

Because it found the contractual language of the MCS-90 endorsement clear, the Virginia Supreme Court found it "unnecessary to consider the federal statute"—that is, section 31139(b)(1). It thus did not address the question presented in the petition, which expressly concerns section 31139(b)(1). *See* Pet. i. Moreover, as Prime concedes, *see id.* at 3, the outcome of this case would be the same under *Heron*'s analysis: Regardless of whether he was transporting property in interstate commerce at the moment of the crash, Mr. Humphrey was driving a vehicle that was subject to the statutory financial responsibility requirements, and the Virginia Supreme Court would thus agree with the Seventh Circuit that the MCS-90 endorsement applies here.

In sum, the cases that Prime cites do not support its claimed conflict. And under the analysis in each of the cases, the outcome of this case would be the same. This case presents no conflict warranting this Court's review.

II. The circumstances here are uncommon, and answering the question presented would not necessarily resolve whether the MCS-90 endorsement applies in future cases.

Prime's failure to demonstrate a conflict over whether a truck is engaged in the interstate transportation of property under circumstances similar to those in this case underscores an additional reason why the petition should be denied: it presents an issue that rarely arises. Other than the decision below, Prime does not identify any case from any court addressing whether a truck that moves property between states is engaged in the interstate transportation of property when it is engaging in a "service[] related" to that movement, 49 U.S.C. § 13102(23)(B)—let alone a case addressing whether a truck is engaged in the interstate transportation of property when it is midway through a roundtrip interstate journey and is driving to pick up property to move over state lines. There is no need for this Court to grant review over a question that rarely arises.

Moreover, answering the question presented in the petition will not necessarily resolve whether the MCS-90 endorsement applies even in a possible future case that arises under circumstances similar to those here. Prime's petition lists only one question presented, which relates to the interpretation of section 31139(b)(1). *See* Pet. i. The issue in this case, however, is not whether section 31139(b)(1) applies, but whether the MCS-90 endorsement applies. As *Heron* demonstrates, whether the MCS-90 endorsement applies does not depend only on the interpretation of section 31139(b)(1), but on the interpretation of the

language in the endorsement. Granting review in this case would thus either require the Court to consider an antecedent question about contract interpretation that Prime has largely chosen to ignore, or to issue an opinion that might not even resolve whether the MCS-90 endorsement applies in a hypothetical future case in which a truck driver on a roundtrip interstate journey gets into a crash while driving to pick up property to carry back to his home state.

III. The Seventh Circuit correctly held that Mr. Humphrey was engaged in the interstate transportation of property at the time of the crash.

A. The Seventh Circuit correctly held that Mr. Humphrey was engaged in the interstate transportation of property when he collided with Mr. Wright. As the court of appeals explained, the "transportation" of property includes "services related" to the movement of property, "including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property." 49 U.S.C. § 13102(23)(B). Mr. Humphrey was engaged in a "service[] related" to the movement of property across state lines when he collided with Mr. Wright: He was driving to pick up a load to bring from Indiana to Illinois, and "loads must be picked up before they can be delivered." Pet. App. 6a. Mr. Humphrey's travel during his interstate journey to pick up goods to carry over state lines was part of the interstate transportation of property and was covered by the MCS-90 endorsement.

B. Prime insists that a truck is engaged in the interstate transportation of property only during the

moments in which it is loaded with freight and moving between locations in different states. Notably, Prime does not cite a single case that agrees with its position. Indeed, the two cases that it claims agree with it state the opposite. *See Coleman*, 625 F.3d at 252 (explaining that "transportation" is "broad" and includes "services related" to the movement of property (quoting 49 U.S.C. § 13102(23)(B)); *Martinez*, 139 A.3d at 621 (noting that, "[i]n the context of motor carrier transportation, courts have consistently held that a trip within only one state may nevertheless be considered interstate in nature").

Prime's arguments in support of its restrictive standard lack merit. First, Prime contends that Mr. Humphrey was not engaged in the transportation of property because transportation of property "means moving property from one place to another." Pet. 16. But Mr. Humphrey moved property from Indiana to Illinois and was engaged in a "service[] related" to that movement of property at the time of the crash. 49 U.S.C. § 13102(23)(B). And this Court has recognized that people can be "part of the interstate transportation of goods" even when they are not themselves moving property across state lines. *Sw. Airlines Co. v. Saxon*, 142 S. Ct. 1783, 1789 (2022) (explaining that airplane cargo loaders are directly involved in transporting goods across state borders).

Second, Prime notes that other statutory provisions refer to intrastate as well as interstate commerce or impose mandates on motor carriers without regard to whether they are transporting property. Prime argues that Congress could have used such language if it wanted to reach trucks "driving without a load between two places in the same state."

Pet. 17. But there was no need for Congress to use different language to reach the situation here, because Mr. Humphrey was engaged in the interstate transportation of property at the time of the crash: He had already driven from Illinois to Indiana and dropped off a load, and he was driving to pick up his next load to bring back to Illinois.

Third, Prime contends that section 13102's definition of "transportation" does not apply to section 31139(b)(1). In particular, citing the "rule of the last antecedent," it argues that the reference to section 13102 in section 31139(b)(1)—that is, the phrase "as such terms are defined in section 13102"—only incorporates section 13102's definitions of "motor carrier" and "motor private carrier," not its definition of "transportation." Pet. 18. By using the plural "such terms," however, section 31139(b)(1) makes clear that the cross-reference does not just apply to its closest antecedent, which would be the term "motor private carrier," but to multiple terms in the preceding phrase: "transportation of property by motor carrier or motor private carrier." 49 U.S.C. § 31139(b)(1). Like "motor carrier" and "motor private carrier," "transportation" is an integral term in the phrase that is defined in section 13102.

Moreover, the definitions of "motor carrier" and "motor private carrier" in section 13102 incorporate the term "transportation." A "motor carrier" is "a person providing motor vehicle transportation for compensation," 49 U.S.C. § 13102(14), and a "motor private carrier" is "a person, other than a motor carrier, transporting property by motor vehicle" in certain circumstances, including "when the transportation is as provided in section 13501" of Title

49, *id.* § 13102(15). Thus, the phrase "the transportation of property by motor carrier or motor private carrier" in section 31139(b)(1) means "the transportation of property by a person providing motor vehicle transportation for compensation or a person, other than a motor carrier, transporting property by motor vehicle when the transportation is as provided in section 13501 [and in other circumstances]." It would be nonsensical for the last three references to "transportation" or "transporting" in this sentence to mean "transportation" as defined in section 13102(23)—as they unquestionably do—but for the first reference to "transportation" to have a different meaning. *Cf. Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 889 (2019) (declaring it "implausible" that Congress gave the same word "different meanings in consecutive, related sentences within a single statutory provision").

In any event, regardless of the cross-reference to section 13102, the term "transportation" in section 31139(b)(1) includes services related to the movement of property. The Motor Carrier Act of 1980 "amend[ed] subtitle IV" of Title 49. Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793. At that time, the definition of "transportation" for subtitle IV included "services related to [the] movement" of property. *See* 49 U.S.C. § 10102(23)(B) (1976 ed., Supp. III).[1] Thus, the term "transportation" in section 30 of the Motor Carrier Act included such services.

That statutory definition was still in place when, in 1994, Congress recodified and reenacted section 30 of the Motor Carrier Act as section 31139. *See*

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[1] https://tile.loc.gov/storage-services/service/ll/uscode/uscode1976-02304/uscode1976-023049101/uscode1976-023049101.pdf.

49 U.S.C. § 10102(26)(B) (1994). As Prime concedes, this recodification was "without substantive change." Pet. 5 (quoting Act of July 5, 1994, Pub. L. No. 103-272, §§ 1, 31139, 108 Stat. 745, 1006–07). Thus, the meaning of section 30 did not change, and the term "transportation" continued to include services related to the movement of property. Indeed, if that were not the case, and section 31139(b)(1) had a meaning different than section 30 of the Motor Carrier Act, section 31139(b)(1)'s relevance to this case would be questionable, because the MCS-90 endorsement refers to section 30 of the Motor Carrier Act, not to section 31139(b)(1).

Furthermore, even apart from the statutory definitions of transportation, interstate transportation is not limited to the moments in which a motor vehicle is loaded with freight and moving from a place in one state to a place in another. This Court long ago explained, for example, that breaking up trains and taking them to the appropriate tracks to make up outgoing trains "was as much a part of the interstate transportation as was the movement across the state line." *St. Louis, San Francisco, & Texas Ry. Co. v. Seale*, 229 U.S. 156, 161 (1913). And just last term, this Court found it "plain" that "airline employees who physically load and unload cargo on and off planes traveling in interstate commerce are … part of the interstate transportation of goods," although those workers do not themselves move property across state lines. *Sw. Airlines*, 142 S. Ct. at 1789.

Fourth, Prime contends that Mr. Humphrey was not engaged in a "service[] related" to the movement of property at the time of the crash. According to Prime, although section 13102(23)(B) includes

"arranging for" and "interchange" of property in its list of services related to the movement of property, it does not "contemplate[]" "arranging for the interchange of property," which is how the Seventh Circuit characterized the service here. Pet. 20. The list of services in section 13102(23)(B), however, contains examples of services related to the movement of property; the list begins with the word "including," which is "usually a term of enlargement, and not of limitation." *Burgess v. United States*, 553 U.S. 124, 131 n.3 (2008) (quoting 2A N. Singer & J. Singer, Sutherland on Statutory Construction § 47:7, p. 305 (7th ed. 2007)). And although Prime objects to linking together the examples of services in section 13102(23)(B), the relevant question is not how the service at issue is described, but whether it "relate[s] to th[e] movement" of property. 49 U.S.C. § 13102(23)(B). Here, the service Mr. Humphrey undertook directly relates to that movement. He had received his dispatch instructions and was driving to pick up property to move across state lines at the moment that he crashed.

Prime's reliance on *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013), is misplaced. There, the Court held that the storage of a towed car after the towing job was done was not "transportation" within the meaning of section 13102(23)(B) because the storage did not relate to the movement of the car. *Id.* at 262. Prime wrongly surmises that the case "may have come out the other way" under the Seventh Circuit's analysis because the service in *Dan's City* "could perhaps be described as 'arranging for' 'storage' of property." Pet. 20. Regardless of how it was described, however, the service in *Dan's City* did not relate to the movement of property and therefore was

not part of transportation. Here, in contrast, no matter how the service in which Mr. Humphrey was engaged is described, it relates to the movement of property and is therefore included in the definition of transportation.

Indeed, rather than aiding Prime, *Dan's City* underscores that the transportation of property includes moments when the property at issue is not moving. *Dan's City* explained that although post-towing storage was not part of transportation, "[t]emporary storage of an item in transit en route to its final destination relates to the movement of property and therefore fits within § 13102(23)(B)'s definition." 569 U.S. at 262. Section 13102(23)(B)'s inclusion of "arranging for" the movement of property likewise demonstrates that "transportation" is not limited, as Prime argues, to the moments in which a truck is "carrying property." Pet. 16. Although arranging for the movement of property precedes the carrying of the property, the statute recognizes it as part of "transportation." Thus, as the Seventh Circuit explained, "carrying freight at the instant of a collision is *not* essential to 'transportation.'" Pet. App. 5a.

C. The Seventh Circuit's determination that the MCS-90 endorsement applies in this case is correct for an additional reason. In the endorsement, the insurance carrier agrees to pay any final judgment against the insured for public liability for negligence in the use of "motor vehicles subject to the financial responsibility requirements of" the Motor Carrier Act. Pet. App. 3a. Regardless of whether Mr. Humphrey was engaged in the interstate transportation of property at the moment of the crash, the vehicle he

was driving was subject to the Motor Carrier Act's financial responsibility requirements because it was operated by a motor carrier that transports property in interstate commerce. *See* 49 C.F.R. § 387.7(a) (forbidding a motor carrier that transports property in interstate commerce from operating a vehicle until it has the minimum levels of financial responsibility). Accordingly, the MCS-90 endorsement applies.

D. The Seventh Circuit's decision aligns with the purpose of the MCS-90 endorsement. The endorsement provides "a safety net" to protect the public. *Carolina Cas. Ins. Co. v. Yeates*, 584 F.3d 868, 878 (10th Cir. 2009) (en banc). Its "primary purpose … is to assure that injured members of the public are able to obtain judgment from negligent authorized interstate carriers." *Canal Ins. Co. v. Distrib. Servs., Inc.*, 320 F.3d 488, 490 (4th Cir. 2003) (citation omitted). The Seventh Circuit's decision furthers this purpose by ensuring that the public is protected and able to recover if the motor carrier is negligent at any point in its transportation of property in interstate commerce.

In contrast, Prime's position would cause coverage to flick on and off throughout a truck's interstate journey transporting property. Here, for example, the endorsement would have applied when Mr. Humphrey brought a load from Illinois to Indiana, flicked off when he dropped off the load and was dispatched to pick up the next one, and flicked back on again when he picked up that load to bring back to Illinois. This pattern could repeat over and over on a long trip, even if Mr. Humphrey was engaged in services related to the interstate transportation of property the entire time. And the patchiness of the

coverage would be exacerbated if Prime's suggestion that the MCS-90 endorsement never applies when a truck is moving "between two locations in the same state" were taken literally. Pet. i. Then, the coverage might turn on when a truck picks up a load to bring to another state, but it might not if the driver intends to stop for gas before crossing the border. And, once on, the coverage might stay on until the load is delivered, but it might turn off if the driver stops for a cup of coffee after crossing the state border.

Fortunately, section 31139(b)(1) does not support this spotty and uncertain coverage. Mr. Humphrey was engaged in the interstate transportation of property when he collided with Mr. Wright's car, and the court of appeals correctly held that the MCS-90 endorsement applies.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID A. SINGLETON
Counsel of Record
BLACKBURN ROMEY
4203 W. Jefferson Blvd.
Fort Wayne, IN 46804
(260) 422-4400
dsingleton@blackburnromey.com

ADINA H. ROSENBAUM
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Respondent

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