No. 22-1805

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

YING YE, as Representative of the Estate of Shawn Lin, Deceased,
Plaintiff-Appellant,

v.

GLOBALTRANZ ENTERPRISES, INC.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois
No. 1:18-CV-01961
Hon. Elaine E. Bucklo, U.S.D.J.

APPELLANT'S PETITION FOR REHEARING EN BANC

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August 1, 2023

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-1805

Short Caption: Ying Ye v. GlobalTranz Enterprises, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Ying Ye, as representative of the estate of Shawn Lin, deceased

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Public Citizen Litigation Group; Cowen Rodriguez Peacock, P.C.; Levinson & Stefani

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Adina H. Rosenbaum Date: 8/1/23

Attorney's Printed Name: Adina H. Rosenbaum

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Scott L. Nelson Date: 8/1/23

Attorney's Printed Name: Scott L. Nelson

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Michael Cowen Date: 8/1/23

Attorney's Printed Name: Michael Cowen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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RULE 35(b)(1) STATEMENT

Plaintiff-Appellant Ying Ye seeks en banc rehearing because this case involves an issue of exceptional importance: whether the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1), preempts personal-injury claims against freight brokers arising from the broker's negligent hiring of an unsafe motor carrier to provide motor vehicle transportation. The panel's holding that the FAAAA preempts such claims squarely conflicts with the only other federal court of appeals decision to have considered the issue: *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 2866 (2022), which, as the panel in this case stated, "arose from near-identical facts to those here." Slip Op. 20. *Miller* held that negligent-hiring claims against freight brokers arising out of motor vehicle accidents are not preempted by 49 U.S.C. § 14501(c)(1) because they fall within the safety exception to preemption in 49 U.S.C. § 14501(c)(2)(A), which exempts from preemption under § 14501(c)(1) "the safety regulatory authority of a State with respect to motor vehicles." *See Miller*, 976 F.3d at 1026–31.

The panel's decision will have broad impacts on road safety. If brokers cannot be held accountable for negligently hiring unsafe motor carriers, they will have reduced incentives to ensure that they are not hiring motor carriers that will place unsafe motor vehicles on the road. This reduction in safety will come at the expense of other drivers and passengers, who are placed at risk of being injured or killed by motor vehicles when brokers negligently hire unsafe motor carriers to provide motor vehicle transportation.

STATEMENT OF THE CASE

In 1994, Congress determined that "certain aspects of the State regulatory process should be preempted" and enacted a provision regarding the "preemption of state economic regulation of motor carriers." FAAAA, Pub. L. No. 103-305, § 601(a), (c), 108 Stat. 1569, 1605, 1606 (1994). As later amended, that provision preempts state laws "related to a price, route, or service of any motor carrier … or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

At the same time that it enacted the preemption provision, Congress sought to "ensure that its preemption of States' economic

authority over motor carriers of property" would "'not restrict' the preexisting and traditional state police power over safety." *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 439 (2002) (quoting 49 U.S.C. § 14501(c)(2)(A)). Accordingly, Congress specified that the preemption provision "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." 49 U.S.C. § 14501(c)(2)(A). This exception from preemption is often called the "safety exception." *Ours Garage*, 536 U.S. at 435.

This case presents the question whether the preemption provision in 49 U.S.C. § 14501(c)(1) preempts personal-injury claims against freight brokers based on their negligent hiring of an unsafe motor carrier. On October 31, 2017, defendant-appellee GlobalTranz Enterprises, Inc., a freight broker, entered into a contract for Global Sunrise, Inc., a motor carrier, to transport freight from Chicago, Illinois to Conroe, Texas. App. 23, 24, ¶¶ 4.11–4.13, 4.17. GlobalTranz selected Global Sunrise to transport the freight even though public information revealed that the motor carrier had a history of violating federal motor carrier safety regulations, including engaging in violations related to unsafe driving and drivers' hours of service. *Id.* at 24, ¶¶ 4.16–4.18. In addition, Global

Sunrise was what is known as a "chameleon" or "reincarnated" carrier. *Id.* at 22, ¶ 4.1. It was the continuation of two related businesses, operated under other names, that ceased operations because of multiple violations of the federal motor carrier safety regulations and the imposition of a conditional safety rating by the Federal Motor Carrier Safety Administration. *Id.*

On November 7, 2017, David Antoine Carty, a Global Sunrise driver, was operating a tractor-trailer while transporting the cargo brokered by GlobalTranz. *Id.* at 25, ¶ 4.22. Mr. Carty made a right turn from the third lane from the right, crossing two other lanes of travel. *Id.*, ¶ 4.24. Mr. Carty failed to use his mirrors and to ensure that there was no traffic coming before crossing the other lanes of traffic to make the turn. *Id.* at 28, ¶ 5.3. As a result of Mr. Carty's improper turn, the truck collided with a motorcycle ridden by Shawn Lin. *Id.* at 25, ¶ 4.25. Mr. Lin died from injuries sustained in the crash. *Id.*, ¶ 4.28.

On March 19, 2018, Mr. Lin's widow, Ying Ye, filed this action in the United States District Court for the Northern District of Illinois, alleging claims against Global Sunrise. On October 25, 2019, she filed an amended complaint, adding GlobalTranz as a defendant. *Id.* at 20–31. As

relevant here, the amended complaint alleges that GlobalTranz was negligent in selecting Global Sunrise to transport freight because it knew or should have known that Global Sunrise was an unsafe company with a history of hours-of-service and unsafe-driving violations. *See id*. at 28, ¶ 5.8.

On March 4, 2020, the district court granted GlobalTranz's motion to dismiss the negligent-hiring claim, holding that the claim is preempted by the FAAAA. *See id*. at 5–11. On July 18, 2023, a panel of this Court affirmed. The panel first held that the negligent-hiring claim falls within the scope of the FAAAA's preemption provision, 49 U.S.C. § 14501(c)(1). *See* Slip Op. 6–10. The panel then held that the claim does not fall within the scope of the safety exception because it "is not a law that is 'with respect to motor vehicles.'" *Id*. at 11 (quoting 49 U.S.C. § 14501(c)(2)(A)). According to the panel, "the exception requires a direct link between a state's law and motor vehicle safety." *Id*. Although GlobalTranz hired Global Sunrise to provide motor vehicle transportation, resulting in a motor vehicle accident, and although the state-law requirement underlying the negligent-hiring claim is aimed at protecting the public from the dangers posed by motor vehicles, the panel stated that it saw no

"direct link between negligent hiring claims against brokers and motor vehicle safety." *Id.*

ARGUMENT

I. The panel's decision directly conflicts with a Ninth Circuit decision that presented "near-identical facts."

A. The panel's holding that the FAAAA preempts Ms. Ye's claim squarely conflicts with the Ninth Circuit's decision in *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016. As the panel explained, *Miller* "arose from near-identical facts to those here: Allen Miller sought to recover damages from a freight broker that he alleged was negligent in hiring an unsafe motor carrier whose driver caused a highway accident leaving Miller a quadriplegic." Slip Op. 20. The Ninth Circuit held that, although Mr. Miller's claim fell within the scope of the preemption provision, 49 U.S.C. § 14501(c)(1), it was "saved from preemption by the safety exception." *Miller*, 976 F.3d at 1025. "In enacting that exception," the court explained, "Congress intended to preserve the States' broad power over safety, a power that includes the ability to regulate conduct … through common-law damages awards." *Id.* at 1020. Moreover, the court held, "negligence claims against brokers, to the extent that they arise out of motor vehicle accidents, have the requisite 'connection with'

motor vehicles." *Id.* at 1031. Such claims, the court explained, "promote safety on the road." *Id.* at 1030.

The panel's conclusion in this case that the safety exception does not apply to a personal-injury claim against a freight broker based on its negligent selection of an unsafe motor carrier directly conflicts with *Miller*'s holding that the safety exception saves such claims from preemption.[1]

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[1] The panel's opinion is also contrary to a large majority of district courts to have considered the issue. *See Wardingley v. Ecovyst Catalyst Techs., LLC*, __ F. Supp. 3d __, 2022 WL 16714139, at *6 (N.D. Ind. Nov. 4, 2022); *Carter v. Khayrullaev,* No. 4:20-CV-00670-AGF, 2022 WL 9922419, at *4 (E.D. Mo. Oct. 17, 2022); *Ortiz v. Ben Strong Trucking, Inc.*, 624 F. Supp. 3d 567, 584 (D. Md. 2022); *Mata v. Allupick, Inc.*, No. 4:21-CV-00865-ACA, 2022 WL 1541294, at *6 (N.D. Ala. May 16, 2022); *Dixon v. Stone Truck Line, Inc.*, No. 2:19-CV-000945-JCH-GJF, 2021 WL 5493076, at *14 (D.N.M. Nov. 23, 2021); *Taylor v. Sethmar Transp., Inc.*, No. 2:19-CV-00770, 2021 WL 4751419, at *16 (S.D.W. Va. Oct. 12, 2021); *Crouch v. Taylor Logistics Co.*, 563 F. Supp. 3d 868, 876 (S.D. Ill. 2021); *Gerred v. FedEx Ground Packaging Sys., Inc.*, No. 4:21-CV-1026-P, 2021 WL 4398033, at *3 (N.D. Tex. Sept. 23, 2021); *Montgomery v. Caribe Transp. II, LLC*, No. 19-CV-1300-SMY, 2021 WL 4129327, at *2 (S.D. Ill. Sept. 9, 2021); *Bertram v. Progressive Se. Ins. Co.*, No. 2:19-CV-01478, 2021 WL 2955740, at *6 (W.D. La. July 14, 2021); *Reyes v. Martinez*, No. EP-21-CV-00069-DCG, 2021 WL 2177252, at *6 (W.D. Tex. May 28, 2021); *Popal v. Reliable Cargo Delivery*, No. P:20-CV-00039-DC, 2021 WL 1100097, at *4 (W.D. Tex. Mar. 10, 2021); *Grant v. Lowe's Home Ctrs., LLC*, No. CV 5:20-02278-MGL, 2021 WL 288372, at *4 (D.S.C. Jan. 28, 2021); *Mendoza v. BSB Transp., Inc.*, No. 4:20 CV 270 CDP, 2020 WL 6270743, at *4 (E.D. Mo. Oct. 26, 2020); *Skowron v. C.H. Robinson Co.*, 480 F. Supp. 3d 316, (continued…)

B. *Miller* and the panel decision in this case are the only federal appellate decisions to have considered whether the FAAAA preempts a personal-injury claim against a freight broker based on its negligent hiring of an unsafe motor carrier. As the panel noted, the Eleventh Circuit's decision in *Aspen American Insurance Co. v. Landstar Ranger, Inc.*, 65 F.4th 1261 (11th Cir. 2023), also involved a negligent-hiring claim against a freight broker. That case, however, did not involve a personal-injury claim or the hiring of an unsafe motor carrier. Rather, *Aspen* involved a claim by a shipper's insurer against a broker based on the broker having given the shipment to a thief. *See id.* at 1264. The Eleventh Circuit held that the claim fell within the FAAAA's preemption

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321 (D. Mass. 2020); *Uhrhan v. B&B Cargo, Inc.*, No. 4:17-CV-02720-JAR, 2020 WL 4501104, at *5 (E.D. Mo. Aug. 5, 2020); *Lopez v. Amazon Logistics, Inc.*, 458 F. Supp. 3d 505, 515 (N.D. Tex. 2020); *Huffman v. Evans Transp. Servs., Inc.*, No. CV H-19-0705, 2019 WL 4143896, at *4 (S.D. Tex. Aug. 12, 2019), report and recommendation adopted, No. 4:19-CV-705, 2019 WL 4142685 (S.D. Tex. Aug. 28, 2019); *Gilley v. C.H. Robinson Worldwide, Inc.*, No. CV 1:18-00536, 2019 WL 1410902, at *5 (S.D.W. Va. Mar. 28, 2019); *Finley v. Dyer*, No. 3:18-CV-78-DMB-JMV, 2018 WL 5284616, at *6 (N.D. Miss. Oct. 24, 2018); *Mann v. C.H. Robinson Worldwide, Inc.*, No. 7:16-CV-00102, 2017 WL 3191516, at *8 (W.D. Va. July 27, 2017); *Morales v. Redco Transp. Ltd.*, No. 5:14-CV-129, 2015 WL 9274068, at *3 (S.D. Tex. Dec. 21, 2015); *Owens v. Anthony*, No. 2-11-0033, 2011 WL 6056409, at *4 (M.D. Tenn. Dec. 6, 2011).

provision and did not fall within the scope of the safety exception. *See id.* at 1266–72.

Whether enforcement of a state-law requirement to exercise care not to hire a motor carrier that will steal the cargo falls within the safety exception is a separate question from whether enforcement of a state-law requirement to exercise care not to hire an unsafe motor carrier falls within that exception. Whereas enforcement of the former requirement is not an exercise in state authority concerning the safety risks posed by motor vehicles, enforcement of the latter requirement is, and is part of the state's "safety regulatory authority … with respect to motor vehicles." Because the panel's decision holding otherwise squarely conflicts with the only other federal court of appeals to have addressed the issue, this Court should grant en banc review.

II. The panel's decision incorrectly interprets the safety exception.

A. The panel erred in holding that personal-injury claims against brokers based on the negligent hiring of an unsafe motor carrier to provide motor vehicle transportation are insufficiently connected to motor vehicle safety to fall within the safety exception. As the United States explained when invited by the Supreme Court to file a brief

concerning the petition for certiorari in *Miller*, "[t]he safe operation of a vehicle is necessarily connected to the vehicle's operator, *i.e.*, the motor carrier providing the motor vehicle transportation. The selection of a safe motor carrier therefore is logically a meaningful component of commercial motor-vehicle safety." Br. for U.S. as Amicus Curiae at 17, *C.H. Robinson Worldwide, Inc. v. Miller*, No. 20-1425 (U.S., filed May 24, 2022) (hereafter "U.S. Br., *Miller*").[2]

Moreover, the purpose of imposing a requirement on brokers not to hire unsafe motor carriers is to protect third parties from the dangers posed by unsafe *motor vehicles*. That is, the state-law requirement underlying Ms. Ye's claim is aimed at protecting the public from motor vehicle accidents.

Overall, a state law is "with respect to" a topic when it "concern[s]" that topic, *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 261 (2013), and "[a] state requirement that a broker exercise ordinary care in selecting a motor carrier to safely operate a motor vehicle when providing motor vehicle transportation on public roads is a requirement that

[2] Available at https://www.supremecourt.gov/DocketPDF/20/20-1425/226161/20220524152825488_20-1425%20CH%20Robinson--US%20Invitation%20Br.pdf.

'concerns' motor vehicles" U.S. Br., *Miller*, at 16. Such a state-law requirement is "responsive to safety concerns respecting motor vehicles," helping "to protect citizens from injuries caused by motor vehicles." *Skowron*, 480 F. Supp. 3d at 321. Because the safety with which such a state-law requirement is concerned is the safety risk posed by motor vehicles, the requirement is part of the state's "safety regulatory authority … with respect to motor vehicles," 49 U.S.C. § 14501(c)(2)(A), and claims based on that requirement fall within the safety exception.

B. In holding that Ms. Ye's claim was not "with respect to motor vehicles," the panel generally focused on the relationship between brokers and motor vehicles, rather than between the state safety regulatory authority and motor vehicles. "Absent unusual circumstances," the panel stated, "the relationship between brokers and motor vehicle safety will be indirect, at most." Slip Op. 14. GlobalTranz, it noted, "does not own or operate motor vehicles." *Id.* Under the plain text of the safety exception, however, the relevant inquiry is not into the relationship between the *regulated entity* and motor vehicles, but between the *state law* and motor vehicles. And state safety laws can concern motor vehicles without directly regulating motor vehicle drivers

or owners. Here, where the state-law requirement is aimed at protecting the public from the dangers posed by motor vehicles, it is part of the state's safety regulatory authority "with respect to motor vehicles" and falls within the safety exception.

The panel pointed out that the safety exception and the definition of "motor vehicle" in 49 U.S.C. § 13102(16) do not "expressly mention brokers." Slip Op. 12. But the safety exception and definition of motor vehicle also do not mention motor carriers, motor private carriers, or freight forwarders. That is, they do not mention *any* of the entities whose "price[s], route[s], or service[s]" are referred to in § 14501(c)(1). Accordingly, if the safety exception did not apply to laws regulating entities that are not named in the exception or in the definition of motor vehicle, the exception would not apply to *any* laws. Unlike the exception in the third clause of § 14501(c)(2)(A), which exempts from preemption the "authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization," the safety exception, which is in the first clause of § 14501(c)(2)(A), is not based on the nature of the entity being regulated. It is based on the nature of the state

authority being invoked. Where, as here, a claim invokes the state's "safety regulatory authority … with respect to motor vehicles," the claim is exempt from preemption under § 14501(c)(1), regardless of whether the defendant is a broker, motor carrier, or other entity.

The panel also noted that a *different* preemption provision, 49 U.S.C. § 14501(b), which preempts laws "relating to intrastate rates, intrastate routes, or intrastate services of any freight forwarder or broker," does not include a safety exception. Slip Op. 13. According to the panel, "Congress's decision not to write a safety exception for the broker-specific preemption provision indicates a purposeful separation between brokers and motor vehicle safety." *Id.* at 13–14. Congress, however, specifically chose to treat laws related to *inter*state and *intra*state broker prices, routes, and services differently. Instead of addressing laws related to *inter*state broker prices, routes, and services alongside laws related to *intra*state broker prices, routes, and services in § 14501(b), which does not have an express safety exception, it chose to address those laws in § 14501(c)(1), which does have a safety exception. Rather than demonstrating an intent to exclude laws relating to the interstate prices, routes, and services of a broker from the safety exception, Congress's

decision to address those laws in § 14501(c)(1), rather than in § 14501(b), indicates that Congress wanted the safety exception to apply to them.

Finally, the panel stated that "Congress's references to motor vehicle safety" in Title 49 "do not impose obligations on brokers." Slip Op. 18. But the relevant question is not whether the *federal* government regulates brokers in ways that impact safety, but whether the state law at issue is part of the state's safety regulatory authority concerning motor vehicles. Because the state-law requirement underlying Ms. Ye's claim is part of the state's regulatory authority with respect to motor vehicles—aimed at protecting the public from the safety risks posed by dangerous motor vehicles—the panel erred in holding that it does not fall within the safety exception.

III. The panel's decision will negatively impact the safety of roads within this Circuit.

The panel's decision will make the roads less safe. If brokers are immunized against liability for negligently hiring unsafe motor carriers—as they are under the panel's decision—they will have little incentive to prioritize hiring motor carriers that operate safely. Instead, in a race to the bottom, motor carriers will be incentivized to cut safety corners to offer their services to brokers at the lowest possible prices. The

accompanying reduction in safety will come at the expense of people who drive and ride on the highways—people like Mr. Lin, who are not part of the market for broker or motor carrier services, but who pay a heavy price when brokers like GlobalTranz fail to exercise reasonable care.

Under the panel's decision, when it comes to hiring motor carriers, brokers will not be subject to the state-law duty to exercise ordinary care not to hire someone who has "a particular unfitness for the position so as to create a danger of harm to third persons." *Doe v. Coe*, 135 N.E.3d 1, 13 (Ill. 2019) (citation omitted). Plaintiffs will not be able to hold a broker liable for its negligent hiring of an unsafe motor carrier even if the broker *knew* that the motor carrier would place dangerous motor vehicles on the road.

The safety exception was intended to ensure that Congress's preemption of state economic regulation of motor carriers did not interfere with state laws like the law here: those responsive to concerns about the safety risks posed by motor vehicles. This Court should grant en banc review and hold that Ms. Ye's negligent-hiring claim falls within the safety exception and is not preempted by the FAAAA.

CONCLUSION

The Court should grant rehearing en banc.

Respectfully submitted,

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August 1, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing petition complies with the type-volume limitation of Federal Rule of Appellate Procedure 35(b)(2)(A). As calculated by my word processing software (Microsoft Word 2016), the petition contains 3,237 words.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2023, I electronically filed this petition with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Adina H. Rosenbaum
Adina H. Rosenbaum