No. 14-491

In The Supreme Court of the United States

PAC ANCHOR TRANSPORTATION, INC.
AND ALFREDO BARAJAS,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
EX REL. KAMALA D. HARRIS, ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For A Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
MARK J. BRECKLER
Chief Assistant Attorney General
AIMEE FEINBERG*
KATHLEEN RADEZ
Deputy Solicitors General
AMY J. WINN
Supervising Deputy Attorney General
SATOSHI YANAI
Deputy Attorney General
**Counsel of Record*
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102
(415) 703-2545
Aimee.Feinberg@doj.ca.gov

QUESTION PRESENTED

Whether the Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c)(1), preempts a claim brought against a motor carrier under a state statute prohibiting the use of any unlawful business practice, where the state labor and employment laws underlying the claim are not preempted.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES (continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

STATEMENT

1. Petitioners own and operate a port drayage business, transporting shipping containers from the ports of Los Angeles and Long Beach to warehouses, freight depots, and other locations in Southern California. *See* Pet. App. 27. On September 5, 2008, the Attorney General of California filed a complaint in Los Angeles County Superior Court alleging that petitioners were improperly treating certain truck drivers as independent contractors rather than employees as a matter of California law. *Id*. at 60-70. The complaint asserted that, by misclassifying these drivers, petitioners were violating their obligations under the California Labor Code and the California Unemployment Insurance Code to pay unemployment insurance taxes, withhold payroll taxes, obtain workers' compensation insurance, reimburse employees for business expenses, provide employees with itemized written statements, and pay the minimum wage. *Id*. at 66-67. The complaint also alleged that petitioners failed to comply with two provisions of a state Industrial Welfare Commission order (I.W.C. Wage Order No. 9) that require employers to maintain and provide employees with records and to ensure that workers are paid the minimum wage. Pet. App. 67.

Based on these alleged violations of state labor and unemployment insurance laws, the State's complaint asserted a single cause of action under California Business and Professions Code Section 17200 *et seq.*, also known as California's "unfair competition law" or "UCL." The UCL prohibits the use of "any unlawful, unfair or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200 (West 2008); *see* Pet. App. 65-68.

By proscribing "unlawful" business practices, the statute "borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable." *Rose v. Bank of Am., N.A.*, 304 P.3d 181, 185 (Cal. 2013), *cert. denied*, 134 S.Ct. 2870 (2014) (internal quotation marks, alterations, and emphasis omitted); *see also id.* (UCL provides its own "distinct and limited equitable remedies," but uses other laws to define what is "unlawful"). Under the UCL, the state Attorney General and other identified law enforcement authorities may obtain restitution, civil penalties, and injunctive relief; a private plaintiff who meets the "injury in fact" standing requirement may sue for injunctive relief and restitution, but not civil penalties. Cal. Bus. & Prof. Code §§ 17203, 17204, 17206 (West 2008 & Supp. 2015). Damages are not available under the UCL. *See Rose*, 304 P.3d at 185, 187.

Petitioners filed a motion for judgment on the pleadings, asserting that the State's claim was expressly preempted by the Federal Aviation Administration Authorization Act (FAAAA), 49 U.S.C. § 14501(c)(1) (2006). Pet. App. 5. Under Section 14501(c)(1), "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 . . . with respect to the transportation of property." 49 U.S.C. § 14501(c)(1). Petitioners argued that the FAAAA "*per se*" preempted any claim brought under an "unfair competition" law, and also that California's specific claim against petitioners impermissibly "related to" prices, routes, and services with respect to the transportation of property. *See* Pet. App. 5, 42-47.

2. The trial court granted petitioners' motion (Pet. App. 41-47), but the court of appeal reversed (*id.* at 26-40). The appellate court rejected petitioners' argument that the FAAAA categorically preempts any claim brought under California's unfair-competition law: "[w]here a cause of action is based on allegations of unlawful violations of the State's labor and unemployment insurance laws, we see no reason to find preemption merely because the pleading raised these issues under the UCL, as opposed to separately stated causes of action." *Id.* at 36. The court further concluded that the State's specific UCL action against petitioners was not preempted, reasoning that a claim based on violations of generally applicable employment laws is not related to the prices, routes, or services of a motor carrier. *Id*. at 39-40.

3. The California Supreme Court unanimously affirmed. Pet. App. 1-25. It agreed with the court of appeal and the State that the FAAAA does not facially preempt all claims brought under the State's unfair-competition law. *Id.* at 16-19. It explained that "the FAAAA embodies Congress's concerns about regulation of motor carriers with respect to the transportation of property," while "a UCL action that is based on an alleged general violation of labor and employment laws does not implicate those concerns." *Id.* at 17.

The court also concluded that the FAAAA does not preempt the UCL claim pleaded in the State's complaint. Pet. App. 19-24. In that regard, the court noted petitioners' concession that the sections of the California Labor Code and Unemployment Insurance Code on which the State's UCL claim is based are laws of general application, with no more than a

remote effect on motor carriers' prices, routes, and services. *Id.* at 21. With respect to the two other regulations at issue—provisions of a California wage order governing payment of the minimum wage and employer recordkeeping—the court rejected petitioners' preemption argument on the merits. If those provisions "have an effect on [petitioners'] prices, routes, or services, that effect is indirect," and thus falls outside the scope of § 14501(c)(1). *Id.*

The court also rejected petitioners' claim that the State's action, if successful, would require them to reclassify their drivers as employees. Pet. App. 21-22. It explained that "[n]othing in the [State's] UCL action would prevent [petitioners] from using independent contractors. The [State] merely contend[s] that if [petitioners] pay individuals to drive their trucks, they must classify these drivers appropriately and comply with generally applicable labor and employment laws." *Id.*; *see also id.* at 24 ("the [State's] UCL action does not encourage employers to use employee drivers rather than independent contractors"). Based on these conclusions, the court remanded for the trial court to consider the merits of the State's claim. *Id.* at 25.

ARGUMENT

1.a. Petitioners argue primarily that the decision below conflicts with this Court's cases because its preemption analysis "fails to distinguish between the State's claim for unfair competition and the state labor and employment statutes on which that claim is based when determining whether the claim affects motor carrier prices, routes, and services." Pet. 12; *see also id.* at 11-19. This Court's cases draw no such distinction.

In *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. __, 133 S.Ct. 1769 (2013), the Court considered whether the FAAAA preempted a claim brought under New Hampshire's Consumer Protection Act, which provides a right of action to challenge "'any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within' New Hampshire." *Id.* at 1777 n.3 (quoting N.H. Rev. Stat. Ann. § 358–A:2 (West 2009)). In holding that the FAAAA did not displace the claim, the Court did not focus on the fact that the plaintiff's claim was pleaded under an unfair-competition law. *Id.* at 1778-1780. Rather, the Court's analysis centered on whether the substantive law underlying the claim—a state statute regulating the disposal of abandoned cars—fell within the FAAAA's preemptive scope. *Id.* at 1779-1780. The Court explained that plaintiff's consumer-protection and other claims "rel[ied] on New Hampshire's abandoned vehicle disposal regime . . . for the rules governing [defendant's] conduct," and that regime did not relate to motor carrier services with respect to the transportation of property within the meaning of the FAAAA. *Id.* at 1779 (abandoned-car scheme had "neither a direct nor an indirect connection to any transportation services a motor carrier offers its customers"); *id.* at 1780 (abandoned-vehicle law not kind of state economic regulation Congress sought to preempt). As this discussion makes clear, whether the FAAAA preempts a state unfair-competition claim turns on the substance of the law and allegations supporting the claim, not on the fact that the claim is pleaded under a State's unfair-competition law.

This Court's decisions in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), and *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), confirm the point. In *Morales*, the Court considered whether the Airline Deregulation Act (ADA), which contains a preemption provision similar to that in the FAAAA, preempted the enforcement of National Association of Attorneys General (NAAG) guidelines on airfare advertising through States' general consumer-protection laws. 504 U.S. at 383. In holding that it did, the Court's analysis focused on the nature of the guidelines that the States sought to enforce. *Id.* at 387 (guidelines dictating format and content of airfare advertisements "obviously" related to fares); *id.* at 391 ("the fare advertising provisions of the NAAG guidelines are pre-empted"). The Court did not, as petitioners suggest (Pet. 14-15), separately consider whether the consumer-protection laws themselves were preempted. Similarly, in *Wolens*, the Court held that claims brought under Illinois's consumer-protection statute were preempted not because the claims invoked a state consumer-protection law, but because the factual allegations in the plaintiffs' complaints addressed matters falling within the ADA's preemptive compass. 513 U.S. at 226 (claims challenging airline's modifications to frequent-flyer program related to rates and services because they involved the value of mileage credits for free tickets and access to flights and class-of-service upgrades).

As petitioners point out (Pet. 13-14), the Court in *Wolens* analyzed the plaintiffs' consumer-protection claim separately from their breach-of-contract claim. 513 U.S. at 227-233. But the separate discussions addressed whether each claim constituted an enactment or enforcement of a law

within the meaning of the ADA's command that "'no State . . . shall enact or enforce any law . . . relating to [air carrier] rates, routes, or services.'" *Id.* at 226 (quoting 49 U.S.C. app. § 1305(a)(1)) (alterations omitted); *id.* at 227-233 (consumer-protection claim sought to enforce State-imposed requirements whereas claim for breach of contract sought to enforce only voluntarily assumed obligations); *see also Northwest, Inc. v. Ginsberg*, __ U.S. __, 134 S.Ct. 1422, 1431-1433 (2014) (claim asserting breach of Minnesota's implied covenant of good faith and fair dealing qualified as State-imposed obligation subject to ADA preemption because covenant imposed mandatory duties that parties could not contract around); *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, __ U.S. __, 133 S.Ct. 2096, 2102-2103 (2013) (two provisions in concession agreements mandated by shipping ports had "force and effect of law" within meaning of FAAAA because violations subjected carriers to criminal sanctions). With respect to the only question at issue in the present case—whether a state-law claim relates to prices, routes, or services—the Court in *Wolens* drew no distinction between the consumer-protection and breach-of-contract claims. *See* 513 U.S. at 226 ("[p]laintiffs' claims" relate to rates and services). And in analyzing the consumer-protection claim, again, *Wolens* looked not to that label but to the factual allegations underlying the claim. *See id.* Accordingly, neither *Wolens* nor any of this Court's other decisions supports the novel "separate preemption analysis" that petitioners claim the California Supreme Court should have applied in this case. Pet. 18-19.

b. The state Supreme Court likewise correctly held that the FAAAA does not preempt the UCL claim pleaded in this case. Petitioners appear to

concede in this Court that none of the labor and insurance laws underlying the State's UCL action is preempted. Pet. 16, 19; *see also* Pet. App. 21-22 (noting petitioners' concession that the FAAAA excludes from preemption all but two of the labor regulations at issue in the State's complaint). Under *Dan's City*, *Morales*, and *Wolens*, this concession is dispositive. The State does not lose its ability to enforce general labor and insurance laws against a motor carrier simply by pleading its claims under its "unfair competition" law.

Petitioners argue that a UCL claim is preempted because it provides the only basis for civil actions to pursue violations of California labor and insurance laws, and because the UCL authorizes remedies that are unavailable through other enforcement mechanisms. Pet. 17-18. Petitioners never explain, however, how state labor and insurance laws relate to a carrier's prices, routes, or services any more when they are pursued through a UCL action than when they are enforced through an administrative enforcement action, which petitioners appear to concede would not be preempted. *Id.* at 17. Moreover, their premise is faulty. California's labor and insurance laws authorize state agencies to bring civil actions to enforce their provisions, and courts may issue injunctions in such actions to ensure compliance with the law. *See* Cal. Lab. Code § 98.3(b) (West 2011) (state labor commissioner "may prosecute action for the collection of wages and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission"); Cal. Unemp. Ins. Code § 1852 (West 2013) (Director of Employment Development Department may bring civil action to collect delinquent payroll taxes); Cal. Civ. Proc. Code

§ 526(a) (West 2011) (authorizing courts to enter injunctions).

Petitioners further argue that any UCL claim against a motor carrier necessarily relates to prices, routes, or services because an unfair-competition action involves "competition," and carriers compete in the trucking market based on the prices they charge, the routes they travel, and the services they provide. Pet. 22-25. But the fact that petitioners charge prices, travel routes, and provide trucking services does not bring every claim against them within the FAAAA's preemptive scope. As this Court has made clear, "federal law does not pre-empt state laws that affect rates, routes, or services in too tenuous, remote, or peripheral a manner." *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 375 (2008) (internal quotation marks omitted). "[S]tate laws whose effect is forbidden under federal law are those with a *significant* impact on carrier rates, routes, or services." *Id.* (emphasis in original, internal quotation marks omitted). That does not include labor and employment laws of general applicability that have only incidental effects on a carrier's operations. *See, e.g.*, Pet. App. 20, 23.

Petitioners also err in contending that allowing the State's UCL action to proceed would interfere impermissibly with their operations by compelling them to hire only employee-drivers or to contract only with drivers who own their own trucks. Pet. 26-27. As the California Supreme Court expressly concluded, nothing about the State's UCL claim would prevent petitioners from using independent contractors. Pet. App. 21-22, 24. Moreover, whether a particular worker is properly classified as an employee or a contractor under California law turns

on many factors, of which a worker's ownership of tools of his trade is only one. *See S.G. Borello & Sons, Inc. v. Dep't. of Indus. Relations*, 769 P.2d 399, 404 (Cal. 1989) (describing relevant factors). Indeed, the "right to control work details"—not ownership of necessary equipment—is the "most important" consideration. *Id.*[1]

Further, nothing in the State's effort to enforce general labor and insurance laws resembles the "entry controls" that Congress sought to eliminate through the FAAAA. Pet. 5-6, 29. When the Act's legislative history refers to "entry controls," it focuses on state laws that "often serve[d] to protect [existing] carriers, while restricting new applicants from directly competing for any given route and type of trucking business." H.R. Rep. No. 103-677, at 86 (1993) (Conf. Rep.), *as reprinted in* 1994 U.S.C.C.A.N. 1715, 1758. California's UCL claim does not seek to restrict drivers' ability to enter the market, but only to ensure that drivers who are legally employees rather than contractors receive the protections and benefits to which they are entitled. Nor does the record reflect congressional concern about States continuing in their traditional role of regulating employment relationships. The Conference Report's reference to "owner-operators" reflects a legislative

[1] Petitioners' reliance on settlements that the State has reached with other trucking companies is misplaced. Pet. 6 n.2, 34-35. Although some companies have agreed to classify drivers as employees if they do not own their own trucks, nothing about the State's legal theories in this case would require a court to enter an injunction with a similar provision. As the California Supreme Court explained, the State asserts only that "if [petitioners] pay individuals to drive their trucks, they must classify these drivers appropriately and comply with generally applicable labor and employment laws." Pet. App. 22.

concern not with a state employee-classification scheme, but that some group of motor carriers (defined, in that instance, by their use of independent contractors) remained subject to direct state regulation of prices, routes, and services. *Id.* at 87, 1994 U.S.C.C.A.N. at 1759.

2.a. Petitioners err in suggesting (Pet. 30-31) that certain decisions by federal courts of appeals have treated the FAAAA as preempting any state unfair-competition claim against a motor carrier. In *In re Korean Air Lines Co., Ltd. Antitrust Litigation*, 642 F.3d 685 (9th Cir. 2011), for example, the Ninth Circuit held that the ADA preempted claims brought under the UCL and California's antitrust laws not because they were styled as "unfair competition" claims, but because the allegations in the complaint attacked the defendant-airlines' pricing practices. *Id.* at 697 ("Because Plaintiffs allege a price-fixing conspiracy, their claims are plainly related to a price of an air carrier and consequently are preempted."). Likewise, in *S.C. Johnson & Son, Inc. v. Transportation Corp. of America, Inc.*, 697 F.3d 544 (7th Cir. 2012), the Seventh Circuit held that the FAAAA did not preempt claims alleging bribery and racketeering, but did displace claims alleging that motor carriers made fraudulent misrepresentations by omission and engaged in a conspiracy to commit fraud when they paid bribes and kickbacks to a shipper's employee in return for shipping business and premium prices. *Id.* at 545-546, 561. The court held that these claims were preempted because they sought to regulate the terms of the carriers' agreement to transport goods. *Id.* at 557.[2] And the

[2] The *S.C. Johnson* court added that "[c]onsumer fraud laws, which are preempted, necessarily have an industry-wide (continued…)

Eleventh Circuit's decision in *UPS Supply Chain Solutions, Inc. v. Megatrux Transportation, Inc.*, 750 F.3d 1282 (11th Cir. 2014), also cited by petitioners (Pet. 30-31), did not involve the FAAAA, the ADA, or a state unfair-competition law. 750 F.3d at 1295 (Carmack Amendment, 49 U.S.C. § 14706, did not preempt claim for indemnification of attorneys' fees based on contract with carrier).

The majority of the federal district court and intermediate state court of appeals decisions cited by petitioners (Pet. 30-33, 30 n.8) likewise focused on the legal and factual allegations underlying the claim. *See, e.g.*, *Dogbe v. Delta Air Lines, Inc.*, 969 F. Supp. 2d 261, 275-276 (E.D.N.Y. 2013) (ADA preempts consumer-protection claims arising from carrier's refusal to sell plaintiff an airplane ticket); *Levitt v. Southwest Airlines Co.*, 846 F. Supp. 2d 956, 959-960 (N.D. Ill. 2012) (ADA preempts consumer-fraud claims arising from airline's alleged failure to honor coupons for free drinks issued with the purchase of a business-class ticket). The decisions in *Fitz-Gerald v. Skywest Airlines, Inc.*, 155 Cal. App. 4th 411, 423 (2007), *Blackwell v. Skywest Airlines, Inc.*, No. 06cv0307, 2008 WL 5103195, at *20 (S.D. Cal. Dec. 3, 2008), and *Butler v. United Airlines, Inc.* No. 07-04369, 2008 WL 1994896, at *6 (N.D. Cal. May 5, 2008), also cited by petitioners (Pet. 30 n.8, 32-33), rested their analyses on the fact that claims

---

(…continued)
effect on prices and services, since they dictate the rules for price advertising and other marketing practices." 697 F.3d at 559 (relying on *Morales*, 504 U.S. at 389-390). This language does not suggest a general rule that the FAAAA displaces all consumer-protection claims. *See* Pet. 33. The court was addressing claims, unlike the one here, that explicitly seek to regulate carriers' price-advertising.

were pleaded under a state unfair-competition law. But *Fitz-Gerald*, on which *Blackwell* relies in part, was specifically disapproved by the California Supreme Court. Pet. App. 19; *Blackwell*, 2008 WL 5103195, at *20. And *Butler* involved a service dispute over a customer's effort to purchase a seat on an airline flight, not, as here, allegations based on labor laws that the carrier apparently concedes are not preempted. *See* 2008 WL 1994896 at *1-3.

b. Petitioners and their *amicus* the California Trucking Association likewise fail to identify any case that holds, contrary to the ruling below, that the FAAAA preempts actions seeking to enforce general state laws requiring employers to distinguish properly between independent contractors and employees. Pet. 27, 34; CTA *Amicus* Br. 8-9, 17-19. For example, the First Circuit's decision in *Massachusetts Delivery Association v. Coakley*, 769 F.3d 11 (1st Cir. 2014), cited by CTA (Br. 8-9), considered a Massachusetts statute that, unlike California's UCL action in this case, barred employers from hiring independent contractors to perform tasks that were part of the employer's ordinary course of business. 769 F.3d at 15. The court, moreover, did not decide the question of whether the law was preempted, remanding instead for the district court to consider in the first instance whether the statute's effects related to carriers' prices, routes, or services. *Id.* at 23.

The Ninth Circuit's decision in *American Trucking Associations, Inc. v. City of Los Angeles*, 660 F.3d 384 (9th Cir. 2011), *rev'd in part on other grounds, Am. Trucking Ass'ns*, 133 S.Ct. 2096 (2013), is likewise inapposite. There, the court held that the FAAAA preempted a requirement in concession

agreements mandated by the Port of Los Angeles that trucking companies phase out the use of independent contractors and, after a five-year period, use only employee-drivers. *Id.* at 407-408. California's UCL action in this case is quite different. As the California Supreme Court explained, "[n]othing in [the State's] UCL action would prevent [petitioners] from using independent contractors." Pet. App. 21-22. The State "merely contend[s] that if [petitioners] pay individuals to drive their trucks, they must classify these drivers appropriately and comply with generally applicable labor and employment laws." *Id.* at 22. Moreover, the Ninth Circuit's decision did not address whether the employee-driver provision of the port's concession agreements related to prices, routes, or services, because that issue was not challenged on appeal. *Am. Trucking Ass'ns*, 660 F.3d at 407; *see also id.* at 407-408 (holding employee-driver provision preempted because it did not fall within the market-participant exception).[3]

In the absence of any conflict among the circuit courts of appeals or state high courts of last resort, the California Supreme Court's application of settled law to the facts of this case does not warrant further review by this Court.

---

[3] When the Ninth Circuit considered the trucking companies' appeal from the denial of a preliminary injunction two years earlier, the court concluded that the concession agreements related to prices, routes, and services and that the plaintiff trucking companies therefore were likely to prevail on that claim. *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053 (9th Cir. 2009). In reaching that conclusion, however, the court discussed the concession agreements overall (rather than the employee-driver provision in particular), and the port-defendants had not challenged on appeal that the agreements related to prices, routes, or services. *Id.*

3. Finally, the question petitioners ask the Court to address is, at a minimum, not well presented on the current record. As noted above, petitioners argue in part that the State's UCL action is preempted because the enforcement of general state labor laws will require them to use either employee-drivers or drivers who own their own trucks. Pet. 26-27. For the reasons explained above (at 9-10 & 10 n.1) this concern is unfounded, but, in any event, is premature. In considering petitioners' motion for judgment on the pleadings, the trial court made no factual findings with respect to petitioners' current employment practices. And the California Supreme Court reached no legal conclusions concerning whether or how petitioners would have to change their practices to comply with California law. The present record accordingly provides no suitable basis for this Court to consider whether the enforcement of state law in this context would affect petitioners' rates, routes, or services in a manner prohibited by the FAAAA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
EDWARD C. DUMONT
Solicitor General
MARK J. BRECKLER
Chief Assistant Attorney General
AIMEE FEINBERG*
KATHLEEN RADEZ
Deputy Solicitors General
AMY J. WINN
Supervising Deputy Attorney General
SATOSHI YANAI
Deputy Attorney General
**Counsel of Record*

Dated: January 21, 2015