

No. 19-1158

IN THE
Supreme Court of the United States

AIRBUS HELICOPTERS, INC.,

Petitioner,

v.

MARY RIGGS, *et al.*,

Respondents.

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

**BRIEF OF *AMICUS CURIAE* THE GENERAL
AVIATION MANUFACTURERS ASSOCIATION
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae the General Aviation Manufacturers Association, Inc. (GAMA) is an international not-for-profit trade association representing over 100 of the world's leading manufacturers of general aviation airplanes, rotorcraft, engines, avionics, components, and related services. GAMA's members also operate repair stations, fixed-base operators, and pilot and technician training facilities, and manage aircraft fleets.

Since 1970, GAMA has been dedicated to fostering and advancing the welfare, safety, interests, and activities of the general aviation industry. General aviation encompasses all civilian flying except scheduled commercial transport, and includes business travel, medical transport, aerial firefighting, law enforcement, flight training, aerial agricultural services, surveying, and search and rescue. GAMA's members produced nearly all of the over 440,000 general aviation aircraft flying today. Petitioner Airbus Helicopters, Inc. is a GAMA member company.

This case presents a critical question about the Federal Aviation Administration's (FAA's) regulatory system for aviation product approval, and the role that designees have in it. GAMA's members work with the

1. No party or counsel for a party authored this brief, in whole or in part, or made a monetary contribution to fund the preparation or submission of this brief. No one other than *amicus curiae*, its members, or counsel made monetary contributions for the preparation or submission of this brief. All parties received timely notice of GAMA's intent to file this brief, and all parties have consented to its filing.

FAA on a daily basis to obtain product certifications and address any issues that arise in certified products. The FAA delegation system is critical to the FAA's ability to provide certification services and meet its safety responsibilities. Accordingly, GAMA and its members have a substantial interest in this Court's determination regarding the FAA delegation system and the preemptive scope of federal standards governing aviation product design and manufacturing.

Although the issue has significant implications for the entire aviation industry, GAMA represents the general aviation manufacturers and maintainers and is uniquely positioned to discuss the impacts on this industry segment. This case specifically involves an Organization Designation Authorization (ODA), the program by which the FAA grants designee authority to an organization. Currently, thirty-six GAMA member companies hold ODAs of one or more of the types that support FAA product certification. GAMA and its members have been involved in the establishment and use of the FAA regulations and policies governing organization delegations since their inception. GAMA served as the Assistant Chair of the Aviation Rulemaking Advisory Committee Aircraft Certification Procedures Issues Group, the recommendations of which resulted in the FAA's rulemaking effort to establish the ODA program. GAMA also continues to work closely with the FAA to improve the delegation systems and processes. GAMA's unique perspective and decades-long expertise in the design, manufacturing, and certification of aviation products will be useful to the Court in understanding the broader context of FAA's complex, comprehensive regulatory scheme, and how delegation works within it.

SUMMARY OF ARGUMENT

This case involves a formal delegation of the FAA’s legal authority to a designee to support the agency in its comprehensive aviation safety regulatory responsibilities. The Ninth Circuit majority opinion critically misunderstands the FAA’s regulatory scheme—and the role FAA designees play in carrying out the FAA’s federal mandate—and directly conflicts with this Court’s precedent about formal delegation of authority. Failure to correct this clear case of “acting under” a federal agency will result in substantial confusion in aviation, and beyond.

Amicus’s brief explains the broader context of the federal regulatory system for the safety of aviation products in which FAA designees function. At the direction of Congress, the FAA issued a comprehensive regulatory scheme for aviation safety, which includes the certification of aviation products to federal design standards. To assist the agency with its responsibilities, Congress authorized the FAA to delegate to qualified persons and entities the authority to act as representatives of the agency and perform certain agency functions on the FAA’s behalf, subject to FAA supervision and control. This delegation system is essential to the success and effectiveness of the FAA’s certification process, and the safety and viability of the United States aviation industry.

ARGUMENT

I. IN THE INTEREST OF SAFETY, THE FAA COMPREHENSIVELY REGULATES THE STANDARDS FOR THE DESIGN OF AVIATION PRODUCTS.

Congress tasked the FAA with regulating the safety of aviation products, including establishing design standards for aviation products and certifying products as complying with those standards. At Congress's direction, the FAA has established a comprehensive framework that regulates aviation design and manufacturing from cradle to grave. *See, e.g.*, H.R. Rep. No. 525, 103d Cong., 2d Sess., pt. 2, at 5–6 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 1644, 1647 (recognizing that aviation “products are regulated to a degree not comparable to any other” industry).

Design approval is the foundation of the FAA's type certification system. The FAA's regulation of aviation product design begins at a product's inception, with a five-phase design approval or “type certification” process. *See generally* FAA Order 8110.4C, Type Certification (Mar. 28, 2007). Congress obligated the FAA to evaluate every aspect of a proposed product relevant to safety. *See* 49 U.S.C. § 44704(a)(1) (“On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.”). After an applicant submits an application for type certification, the FAA sets the certification basis for the project. The certification basis designates all

applicable federal regulations and any special conditions² that must be met to achieve type certification, defining the FAA safety standards for the product. Applicants must demonstrate compliance with every requirement in the certification basis, in accordance with regulation and the detailed certification plan also approved by the FAA. The FAA issues a type certificate only if the agency determines that the product satisfies its certification basis and has no unsafe feature or characteristic. 14 C.F.R. § 21.21. Congress has found that the FAA’s “certification means that the product meets world-wide recognized standards of safety and reliability.” The Federal Aviation Reauthorization Act of 1996, Pub. L. No. 104-264, § 271(9), 110 Stat. 3239 (1996).

Once a design is FAA approved, it cannot be changed without further FAA approval. The federal regulatory system requires uniformity in the interest of safety. *See* H.R. Rep. No. 2360, 85th Cong., 2d Sess. 1 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3741, 3761 (“It is essential that one agency of government, and one agency alone, be responsible for issuing safety regulations if we are to have timely and effective guidelines for safety in aviation.”). As is relevant here, to make a major change to a product for which a manufacturer is not the type certificate holder, the manufacturer must either obtain a supplemental type

2. If the FAA finds that the airworthiness regulations “do not contain adequate or appropriate safety standards for an aircraft, aircraft engine, or propeller because of a novel or unusual design feature” the agency “prescribes special conditions and amendments” to ensure “a level of safety equivalent to that established in the regulations.” 14 C.F.R. § 21.16.

certificate (STC)³ or a new type certificate. 14 C.F.R. § 21.113. For a Supplemental Type Certificate application, the FAA also establishes a certification basis, and must find compliance with applicable requirements. FAA, *Supplemental Type Certificates: Application-to-Issuance*, www.faa.gov/aircraft/air_cert/design_approvals/stc/stc_app/ (last visited Apr. 19, 2020).

In addition to setting the safety standards and certifying the design of aviation products, the FAA also requires certification for duplication of approved designs (production certificate), 14 C.F.R. pt. 21, subpt. G, and certification that each individual aircraft meets its approved design (airworthiness certificate), *id.* pt. 21, subpt. H. FAA control over aviation design standards also extends to monitoring the continued operational safety of certified products in service. The FAA has mechanisms to continually evaluate the safety of approved products and address potential safety issues. If the FAA determines that an unsafe condition exists, the agency can issue an “airworthiness directive” to address it. *Id.* § 39.5 (“FAA issues an airworthiness directive addressing a product when we find that: (a) An unsafe condition exists in the product; and (b) The condition is likely to exist or develop in other products of the same type design.”). Only the FAA can issue an Airworthiness Directive, and even if an Airworthiness Directive requires a design change, the design approval holder *still must submit the design change to the FAA for review and approval before making the change.* *Id.* § 21.99 (“When an Airworthiness Directive is issued . . . the holder of the type certificate for the

3. A Supplemental Type Certificate is a type of FAA design approval to modify a product from its original design.

product concerned must . . . [i]f the FAA finds that design changes are necessary to correct the unsafe condition of the product, and upon his request, submit appropriate design changes for approval”). The regulatory framework makes clear: the FAA is the sole arbiter of the safety of aviation product designs.

II. THE FAA GRANTS DESIGNEES THE LEGAL AUTHORITY TO ACT ON THE FAA’S BEHALF AND ASSIST THE AGENCY IN FULFILLING ITS COMPREHENSIVE SAFETY RESPONSIBILITIES.

To assist the agency in meeting its comprehensive regulatory responsibilities, Congress empowered the FAA to delegate to qualified persons or organizations the legal authority to act on the agency’s behalf. 49 U.S.C. § 44702(d). “The designee system leverages the FAA’s resources by authorizing individuals and organizations *to perform functions for the agency.*” FAA Order 8100.15B Change 3, Organization Designation Authorization Procedures, at 3-1 (June 15, 2018) (hereinafter “FAA Order 8100.15B”) (emphasis added). Designees have a special relationship with the FAA, acting as “representatives” for the agency. Establishment of Organization Designation Authorization Program, 70 Fed. Reg. 59932, 59933 (Oct. 13, 2005) (explaining that designees “have a unique status” and act as “representatives of the Administrator”); 14 C.F.R. § 183.1 (“This part describes the requirements for designating private persons to *act as representatives of the Administrator* in examining, inspecting, and testing persons and aircraft for the purpose of issuing airman, operating, and aircraft certificates. . . .”) (emphasis added).

The FAA designee system includes individual persons and organizations; Organization Designation Authorization (“ODA”) is the program by which the FAA grants designee authority to organizations or companies. *Id.* pt. 183, subpt D. An ODA holder conducts certain types of FAA functions within the defined scope of its individual authorizations and limitations. There are eight types of ODA programs, each with its own qualifications and functions. FAA Order 8100.15B, at 2-1-2-2. For example, as is relevant here, a Supplemental Type Certificate ODA holder “may develop and issue supplemental type certificates” for modification of a product from its original design, “and related airworthiness certificates.” *Id.* at 2-2.

Although a designee may be part of a manufacturer or a manufacturer employee, designees are “legally distinct and act independent from the organizations that employ them.” 70 Fed. Reg. at 59933; *see also* Official Report of the Special Committee to Review the Federal Aviation Administration’s Aircraft Certification Process (Jan. 16, 2020), at 25, *available at* <https://www.transportation.gov/sites/dot.gov/files/2020-01/scc-final-report.pdf> (hereinafter “Special Committee Report”) (“Although self-employed or in some cases employed by the regulated entity, these designees serve as representatives of the FAA Administrator.”). Manufacturers with designee units cannot and do not “self-certify” their own products. Manufacturers and designee units have separate roles and functions. A Supplemental Type Certificate ODA unit may have the authority to issue a Supplemental Type Certificate to an applicant other than the ODA holder. FAA Order 8100.15B, at 11-5 (“An STC ODA unit may issue an STC to an applicant other than the ODA holder.”). Further, not all ODA holders are manufacturers applying for FAA

design approval. For example, ODA holders also include consultants, such as PATS/ALOFT (Parts Manufacturer Approval and Supplemental Type Certificate), Delta Engineering (Parts Manufacturer Approval, Production Certificate, and Supplemental Type Certificate), 3S Engineering and Certification (Supplemental Type Certificate), and Envoy Aerospace (Supplemental Type Certificate). *See* FAA ODA Directory: January 13, 2020, available at https://www.faa.gov/other_visit/aviation_industry/designees_delegations/designee_types/media/odadirectory.pdf; *see also* FAA Order 8100.15B, at 2-2 (stating that a Supplemental Type Certificate ODA “is intended primarily for repair stations, operators, and manufacturers, *but consultant groups with the required knowledge and experience may also qualify* for an STC ODA.”) (emphasis added).

The FAA selects and authorizes designees to assist the agency in meeting its safety responsibilities. ODAs only “are granted based on the needs of the appointing office and benefit of the FAA.” FAA, *Becoming an ODA*, https://www.faa.gov/other_visit/aviation_industry/designees_delegations/delegated_organizations/become/ (last visited Apr. 19, 2020); *see also* FAA Order 8100.15B, at 4-1 (“Each prospective applicant must confirm whether the FAA needs to appoint the organization and whether the FAA has the resources to manage its organization.”). The FAA is responsible for overseeing and managing the work of designees, and maintains the authority to undertake the agency’s own tests. Designees are subject to FAA supervision, direction, and guidance. A designee’s actions are governed by “the same standards, procedures, and interpretations applicable to FAA employees accomplishing similar tasks.” *Id.* at A-18 (Figure 14.

Memorandum of Understanding). The FAA requires designees to exercise “the same care, diligence, judgment, and responsibility when performing the authorized functions as the FAA would use in performing” those functions. *Id.* at 3-6.

When a Supplemental Type Certificate ODA holder issues a Supplemental Type Certificate within the scope of its authority, the approval activity is complete and has the same standing as a design approval issued by the FAA itself. This is the key distinction between applicant manufacturers that the Ninth Circuit misunderstood: All applicants must *demonstrate* compliance with applicable federal regulations; only the FAA—and designees within the scope of their authority—can *find* compliance with applicable regulations. 14 C.F.R. §§ 21.20, 21.21; *see also* Special Committee Report, at 6 (“The type certification portion of the FAA’s certification process requires that an applicant must show, and the FAA must find, that a given product complies with the relevant regulatory requirements.”). Thus, the role of a designee unit, as a representative of the regulator, is legally separate and different from the applicant manufacturer’s compliance with applicable requirements, as the regulated entity. FAA designees’ special relationship as representatives of the agency, pursuant to a legal delegation of authority, distinguishes them from regulated individuals and entities operating in a highly regulated environment.

III. THE FAA’S DELEGATION SYSTEM IS CRITICAL TO THE SUCCESS AND EFFECTIVENESS OF THE CERTIFICATION PROCESS.

Aviation has achieved a level of safety unprecedented in other modes of transportation. The general aviation

accident rate has been steadily declining in recent years. 2017 had the lowest fatal general aviation accident rate on record in the United States. Nat'l Transp. Safety Bd., *Aviation Statistics*, https://www.nts.gov/investigations/data/pages/aviation_stats.aspx (last visited Apr. 19, 2020). Commercial aviation in the United States has had just one fatal accident since 2013. *Id.* Delegation is a part of this success: The FAA has explained that “the designee system allows the FAA to maintain the highest level of safety by performing certification services.” Establishment of Organization Designation Authorization Procedures; Proposed Rule, 69 Fed. Reg. 2970, 2973 (proposed Jan. 21, 2004) (to be codified 14 C.F.R. pts. 21, 121, 135, 145, 183).

The FAA has a long, successful history of using designees to assist the agency in meeting its regulatory responsibilities, including product approvals. *See, e.g., id.* at 2972 (“The designee system enables the FAA to meet its safety requirements and responsibilities and provide timely certification services. Delegating FAA authority to designees maximizes FAA participation in certification projects and allows the FAA to focus on critical safety areas.”). The FAA’s Aircraft Certification Service—which is responsible for developing and managing the design, production, and airworthiness certification, and continued airworthiness of U.S. civil aviation products and imported products operating worldwide⁴—employs approximately 1,300 individuals. FAA, *Aircraft Certification Service (AIR)*, <https://www.>

4. Between 2013 and 2017, the Aircraft Certification Service “issued 1,127 Type Certification Data Sheets; 4,173 Supplemental Type Certificates; 10,340 New Parts Manufacturing Approvals; 2,128 Technical Standard Orders Authorizations; and 1,809 Airworthiness Directives.” Special Committee Report, at 5.

[faa.gov/about/office_org/headquarters_offices/avs/offices/air/](https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/air/) (last visited Apr. 19, 2020). Delegation provides a structured system to address government resource limitations and leverage industry expertise to assist the agency. The primary need for and benefit of delegation is the significant technical expertise and experience within industry for comprehensive reviews of engineering design data and findings of compliance with applicable safety requirements. “With strict FAA oversight, delegation extends the rigor of the FAA certification process to other recognized professionals, thereby multiplying the technical expertise focused on assuring an aircraft meets FAA regulations.” FAA, *Airworthiness Certification*, https://www.faa.gov/licenses_certificates/aircraft_certification/airworthiness_certification/ (last visited Apr. 19, 2020).

As the aviation industry continues to grow and innovate, developing new, safety-enhancing technologies, delegation helps the FAA keep pace. *See, e.g.*, Special Committee Report, at 26–27 (“Leveraging designee expertise allows the FAA to focus resources on new applications of existing technology, on new and evolving technologies, and on innovation and growth in aviation.”). The FAA has explained that, “using designees for routine certification tasks allows the FAA to focus its limited resources on safety critical certification issues as well as new and novel technologies.” FAA, *About the FAA Designee Program*, https://www.faa.gov/other_visit/aviation_industry/designees_delegations/about/ (last visited Apr. 19, 2020). This is also important for the ability of the United States to remain competitive in the global aerospace market.

Recently, the delegation system has come under intense scrutiny, from the public and within the government. In response to the crashes of two Boeing 737 Max 8 aircraft, the U.S. Secretary of Transportation created a Special Committee of experts to review the FAA's aircraft certification process, including delegation. Significantly, the Special Committee found that "[t]he FAA's delegation system is an appropriate and effective tool for conducting aircraft certification." Special Committee Report, at 12. The Special Committee recommended that "[t]he FAA should continue to make use of the current delegation system, which is solidly established, well controlled, and promotes safety through effective oversight" and that "[t]he aviation community, including the FAA, industry, stakeholders, and Congress, should recognize that the delegation system allows U.S. industry and innovation to thrive, while allocating FAA resources to derive the greatest safety benefit." *Id.*

In sum, delegation is critical to the FAA's ability to meet its obligations to maintain and improve aviation safety.

IV. A STRONG, SAFE AVIATION INDUSTRY IS VITAL TO THE U.S. ECONOMY AND TRANSPORTATION INFRASTRUCTURE.

The FAA's comprehensive, uniform regulatory scheme, and the use of delegation to support it, has proven extraordinarily successful: The U.S. aviation industry is the safest, largest, most diverse, and most technologically innovative in the world. Over 211,000 of the 440,000 general aviation aircraft worldwide are based here in the United States. GAMA, *2019 Databook* (Mar. 20,

2020), available at https://gama.aero/wp-content/uploads/GAMA_2019Databook_Final-2020-03-20.pdf (hereinafter “GAMA 2019 Databook”).

“The economic impact of general aviation reaches all 50 states and the District of Columbia.” PricewaterhouseCoopers, *Contribution of General Aviation to the US Economy in 2018* (Feb. 19, 2020), at E-1, available at https://gama.aero/wp-content/uploads/General_Aviation_s_Contribution_to_the_US_Economy_FINAL_20200219.pdf. In the United States in 2018, general aviation supported \$247 billion in total economic output, \$128 billion in GDP, and 1.2 million total jobs. *Id.* at 11. “[E]ach direct job in general aviation supported 3.3 jobs” in other sectors of the economy. *Id.* Sales of new, US-manufactured general aviation aircraft totaled \$12.2 billion. *Id.* at 3. General aviation manufacturing and maintenance also plays an important role in international trade. “In addition to the manufacture of new aircraft, US manufacturers also produce a variety of parts and components for use in the manufacture, repair, and upkeep of general aviation aircraft around the world.” *Id.* at 4. In 2018, commercial and general aviation exports reached \$131 billion. *Id.* at 4.

General aviation is also crucial to the transportation infrastructure. In 2018, general aviation aircraft in the US flew 25.5 million hours. *See, e.g.*, GAMA 2019 Databook. In addition to transporting persons and cargo, general aviation operations included environmental aerial survey work; law enforcement flights; medical transport of patients, organs, blood, and supplies; aerial firefighting; search and rescue; humanitarian relief and charity flights; and treating approximately 127 million acres of

crops, Nat'l Agricultural Aviation Ass'n, *Industry Facts*, <https://www.agaviation.org/industryfacts> (last visited Apr. 19, 2020). General aviation is also essential to the flight training infrastructure, including the training of pilots for commercial airlines. The primary pipelines for commercial airline pilots in the United States are the military and general aviation, the majority now coming from general aviation.

Furthermore, General aviation connects communities, people, and businesses, and provides specialized services that cannot be supported at primary commercial service airports. FAA, *General Aviation Airports: A National Asset* (May 2012), at 2, available at https://www.faa.gov/airports/planning_capacity/ga_study/media/2012AssetReport.pdf. The majority of U.S. commercial airline flights operate out of a small number of large city airports. Whereas commercial air transportation serves only around 563 airports, there are more than 19,000 landing facilities served by general aviation aircraft. *Id.* at 8. Business aircraft are largely flown into locations with little or no airline service. *The Real World of Business Aviation: 2018 Survey of Companies Using General Aviation Aircraft* (2018), available at <https://gama.aero/wp-content/uploads/The-Real-World-of-Business-Aviation-2018-Survey-of-Companies-Using-General-Aviation-Aircraft.pdf>. In some remote parts of the country like Alaska—where “82 percent of the state’s communities are not connected to a highway or road system”—general aviation is a lifeline, providing the only means of transportation and critical access to products, supplies, emergency and health-care services. *The Wide Wings and Rotors of General Aviation: The Industry’s Economic and Community Impact on the United States*,

at 5 (2015), *available at* https://gama.aero/wp-content/uploads/GAMA_WhitePaper_Final_LRes-Wings-and-Rotors.pdf. During the COVID-19 pandemic, general aviation aircraft have been bringing Americans abroad back home, as well as transporting time-sensitive supplies and medical and testing equipment around the country, underscoring the importance of general aviation to the transportation infrastructure.

CONCLUSION

For the foregoing reasons, as well as those in the petition, the petition should be granted.

Respectfully submitted,

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