

IN THE

Supreme Court of the United States

AARON ABADI,

Applicant,

v.

DEPARTMENT OF TRANSPORTATION,

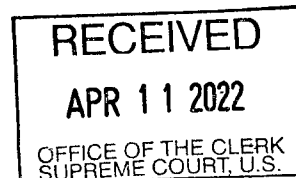
Respondent.

On petition for writ of certiorari to review a judgment on a petition for review of agency failure to act, denied by **United States Court of Appeals for the Second Circuit**.

SUPPLEMENTAL BRIEF FOR PETITIONER

Applicant:

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This supplemental brief is presented to the Court to make the Court aware of a letter recently sent by the major airline association, Airlines for America, to the President of the United States and copied to many in his cabinet. This letter requests that the government repeal the mask mandate for airplanes. It says, "Now is the time for the Administration to sunset federal transportation travel restrictions– including the international predeparture testing requirement and the federal mask mandate – that are no longer aligned with the realities of the current epidemiological environment."

The letter goes on to say, "It makes no sense that people are still required to wear masks on airplanes..."

This letter was signed by the CEO's of many of the major airlines in the United States, from those same airlines that are denying the rights of the disabled, such as this Applicant; those same airlines that are creating the situation that brings this case to the Court. Their disability offices attempt to explain that their decisions to deny the disabled access to fly with their airline is due to health/safety concerns for the other passengers. Assumingly, if they read the law, or even cared somewhat, they're probably suggesting that a disabled person without a mask poses a "Direct Threat," defined in the Air Carrier Access Act ("ACAA") as a significant risk.

There is no way that the same airline that is requesting from the federal government to remove the unnecessary mask mandates for all passengers, because

"an airplane cabin is one of the safest indoor environments." can turn around and say to the disabled person, "sorry, but you are a direct threat."

Their denial and or discriminations against this Applicant and those that are similarly disabled, are just that, "discrimination." There is no longer the excuse of safety and health. The Department of Transportation ("DOT") is responsible to enforce the ACAA laws and stop such discrimination. The only ones that can help this Applicant and others with similar disabilities, is if this Court will make it clear, by accepting this application for a writ of certiorari and declaring what the law actually requires.

Respectfully submitted this April 2nd, 2022,



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No. 21-7372

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APPENDIX

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April 2, 2022

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Airlines for America®
We Connect the World

March 23, 2022

The Honorable Joseph R. Biden Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We appreciate your leadership throughout the COVID-19 crisis and now as the country recovers from the impacts of the pandemic. During the global health crisis, U.S. airlines have supported and cooperated with the federal government's measures to slow the spread of COVID-19. We are encouraged by the current data and the lifting of COVID-19 restrictions from coast to coast, which indicate it is past time to eliminate COVID-era transportation policies.

Our industry has leaned into science at every turn. At the outset, we voluntarily implemented policies and procedures -- mandating face coverings; requiring passenger health acknowledgements and contact tracing information; and enhancing cleaning protocols -- to form a multi-layered approach to mitigate risk and prioritize the wellbeing of passengers and employees. We supported the Centers for Disease Control and Prevention (CDC) as they made some of these policies federal mandates and imposed additional measures, like predeparture testing and vaccination requirements for international travelers, in an attempt to slow the introduction of variants into the United States.

However, much has changed since these measures were imposed and they no longer make sense in the current public health context. The persistent and steady decline of hospitalization and death rates are the most compelling indicators that our country is well protected against severe disease from COVID-19. Given that we have entered a different phase of dealing with this virus, we strongly support your view that "COVID-19 need no longer control our lives."

Now is the time for the Administration to sunset federal transportation travel restrictions -- including the international predeparture testing requirement and the federal mask mandate -- that are no longer aligned with the realities of the current epidemiological environment.

Predeparture Test Requirement

The predeparture test requirement, imposed to slow the introduction of variants into the U.S., has outlived its utility and stymies the return of international travel. The United Kingdom (UK), the European Union and Canada have recognized this reality and lifted travel restrictions. The U.S. inconsistency with these practices creates a competitive disadvantage for U.S. travel and tourism by placing an additional cost and burden on travel to the U.S. Further, many outbound travelers are not willing to risk being stranded overseas. In the Tenth Meeting of the Emergency Committee on January 19, 2022, the World Health Organization (WHO) noted that **"the failure**

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of travel restrictions introduced after the detection and reporting of Omicron variant to limit international spread of Omicron demonstrates the ineffectiveness of such measures over time.” The WHO recommended that countries consider a risk-based approach to the facilitation of international travel by lifting measures, like testing and/or quarantine requirements, for individual travelers who are fully vaccinated with COVID-19 vaccines listed by the WHO.¹ Finally, a recent study by Oxera and Edge Health that examined the effectiveness of travel restrictions in Europe concluded that such measures have failed to prevent the spread of COVID-19.²

Mask Mandate

The science clearly supports lifting the mask mandate, as demonstrated by the recently released CDC framework indicating that 99 percent of the U.S. population no longer need to wear masks indoors. Several studies completed **before we had the added layer of widespread availability of vaccines**, including one from Harvard’s T.H. Chan School of Public Health³ and another from the U.S. Department of Defense⁴, have concluded that an airplane cabin is one of the safest indoor environments due to the combination of highly filtered air and constant air flow coupled with the downward direction of the air. Lifting the mask mandate in airports and onboard aircraft can be done safely as England has done. Importantly, the effectiveness and availability of high-quality masks for those who wish to wear them gives passengers the ability to further protect themselves if they choose to do so. It makes no sense that people are still required to wear masks on airplanes, yet are allowed to congregate in crowded restaurants, schools and at sporting events without masks, despite none of these venues having the protective air filtration system that aircraft do.

It is critical to recognize that the burden of enforcing both the mask and predeparture testing requirements has fallen on our employees for two years now. This is not a function they are trained to perform and subjects them to daily challenges by frustrated customers. This in turn takes a toll on their own well-being.

The high level of immunity in the U.S., availability of high-quality masks for those who wish to use them, hospital-grade cabin air, widespread vaccine availability and newly available therapeutics provide a strong foundation for the Administration to lift the mask mandate and predeparture testing requirements. We urge you to do so now.

We are requesting this action not only for the benefit the of the traveling public, but also for the thousands of airline employees charged with enforcing a patchwork of now-outdated regulations implemented in response to COVID-19.

Respectfully,

¹ [https://www.who.int/news/item/19-01-2022-statement-on-the-tenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/19-01-2022-statement-on-the-tenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic)

² <https://www.iata.org/contentassets/31f976cb5de0427cbe4a85958857a472/oxera.pdf>

³ <https://npli.sph.harvard.edu/resources-2/aviation-public-health-initiative-aphi/>

⁴ <https://www.ustranscom.mil/cmd/panewsreader.cfm?ID=C0EC1D60-CB57-C6ED-90DEDA305CE7459D>

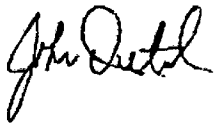
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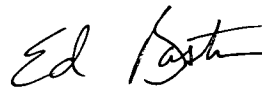
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Ed Bastian
CEO
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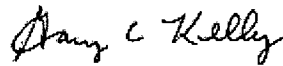
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FedEx Express



Peter R. Ingram
President & CEO
Hawaiian Airlines



Robin Hayes
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JetBlue Airways



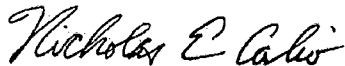
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Scott Kirby
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United Airlines Holdings



Brendan Canavan
President
UPS Airlines



Nicholas E. Calio
President & CEO
Airlines for America

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cc: The Honorable Pete Buttigieg, U.S. Secretary of Transportation
The Honorable Alejandro Mayorkas, U.S. Secretary of Homeland Security
The Honorable Gina Raimondo, U.S. Secretary of Commerce
The Honorable Ron Klain, White House Chief of Staff
The Honorable Steve Ricchetti, Counselor to the President
The Honorable Jeffrey Zients, White House Coronavirus Response Coordinator
The Honorable Brian Deese, Director of the National Economic Council