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IN THE

**Supreme Court of the United States**

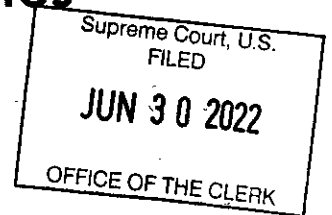
**AARON ABADI,**

*Applicant,*

v.

**DEPARTMENT OF TRANSPORTATION ("DOT"),**

*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 DC Circuit.**

**PETITION FOR WRIT OF CERTIORARI**

**Applicant:**

Aaron Abadi (Pro se)  
82 Nassau Street Apt 140  
New York, NY 10038  
Tel: 212-785-0370  
aabadi@optonline.net

## **QUESTIONS PRESENTED**

- 1) Is there a right to a private action on violations of the Air Carrier Access Act, considering that the Department of Transportation refuses to enforce it, and the Circuit Courts refuse to compel them?
- 2) Should the Circuit Courts compel a federal agency to enforce the laws that Congress intended for them to enforce?

## **PARTIES TO THE PROCEEDING**

The parties to this proceeding are Aaron Abadi, with name, address, and contact info listed above, as Applicant.

Respondent is the Department of Transportation represented by the following attorneys at the Department of Justice:

DANIEL TENNY	Daniel.Tenny@usdoj.gov
STEVEN H. HAZEL	Steven.H.Hazel@usdoj.gov
Civil Division, Appellate Staff	(202) 514-2498
U.S. Department of Justice	
950 Pennsylvania Ave., N.W., Rm. 7216	
Washington, DC 20530	

## **CORPORATE DISCLOSURE STATEMENT**

None of the parties are a private corporation. The Department of Transportation is part of the executive branch of the federal government.

## **STATEMENT OF RELATED PROCEEDINGS**

This application was brought due to a petition of review against an agency "failure to act," that was denied in the case number 22-1012, ABADI v. DEPARTMENT OF TRANSPORTATION, at the DC Circuit Court of Appeals.

There was a previous case that was denied by the 2<sup>nd</sup> Circuit, Abadi v. Department of Transportation case number 21-2807.

There are no other cases directly related to this case.

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## JURISDICTION

The jurisdiction is proper, because it is a petition for review that was denied by the DC Circuit Court (Appendix page 2).

I pray that the Court will address these issues. We are a humane and compassionate people, and we don't allow discrimination against specific races or the disabled. Yet, this Applicant has suffered constant and consistent discrimination due to his disability and is having a very difficult time getting help from the state human rights commissions, and from the courts. **Let's imagine if an entire race were banned by most airlines, wouldn't the Supreme Court interfere immediately, and provide guidance as to the laws of this country?!**

The Court is not under any obligation to hear any cases, and it usually only does so if the case could have national significance, might harmonize conflicting decisions in the federal Circuit courts, and/or could have precedential value. All three reasons apply here. Thousands of people have been suffering these last two years due to disability discrimination, and cases are now filling the lower courts. The District Courts and many of the Circuit Courts have been debating the ACAA private right of action issue for decades. It is certainly time for this court to set a clear precedent and give the country and its court system the appropriate direction.

## PROVISIONS, STATUTES, & REGULATIONS (Full text in Appendix)

- Air Carrier Access Act 14 CFR § 382.17 -382.35: NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL (Appendix Page 3)

➤ Administrative Procedure Act ("APA") 5 USC Ch. 7: § 702-706 JUDICIAL

REVIEW: (Appendix Page 9)

### INTRODUCTION

Applicant hereby petitions this Court, the highest Court in the land, for a writ of certiorari, to review the questions presented. This is not just another case that should be dumped together with the 99% of cases that are denied. This is a unique case and questions that this Court should review and set the record straight.

This is a simple and relatively clear-cut case where the Applicant is being discriminated against due to his disability that causes him not to be medically capable of wearing a mask. Almost all airlines have denied him access to fly with them without a mask for the span of about two years. The discrimination laws are pretty clear and the DOT agrees that this is illegal discrimination, yet it refuses to enforce those laws. Complaints filed are put into a queue that extends for over a year or longer. The DOT even refuses to notify the airlines that this is illegal and unacceptable. The DOT claims agency discretion allows them to decide which laws to enforce and what action to take and when. Even worse than that is that the DOT put out a notice to airlines, approving and encouraging much of the discrimination.

In a previous case (21-2807), this Applicant petitioned to have the Second Circuit Court of Appeals review this agency action, which was due to their failure to act. The court clerk refused to accept a petition for review without an underlying action, and also stated it as the court rule, because in the FRAP it does not allow for a review on a failure to act. The clerk filed the petition as a writ of mandamus,



which is an extraordinary writ. Applicant's motions to the Court to correct the record, and file it as a petition for review were denied by a 3-judge panel, and the writ of mandamus was denied too. The judges explained their decision by saying, "because Applicant has not demonstrated that exceptional circumstances warrant the requested relief."

While they did not explain their decision why they refused to treat it as submitted as a petition for review rather than a writ of mandamus, ultimately, the judges confirmed the clerk's opinion that one cannot file a petition for review on an agency's failure to act. The judges automatically label it as a writ of mandamus, even though I submitted it as a petition for review of an agency action as part of the APA laws. The court clerks said there is no such thing, and the judges confirmed their decisions, by denying the petition and the accompanying motions. Anyone that reads the law knows that a failure to act is a reviewable action.

In this most recent case that was denied by the Circuit Court of Appeals for the DC District, the court did finally consider it an agency review but decided that such a review is not within their jurisdiction. Hence, I come here to this court, begging the court to set the laws straight and tell the country what the correct laws are in such a circumstance.

The Circuit Courts both decided that the failure to enforce ACAA laws was not a reviewable action within their jurisdiction. If Congress is relying on the DOT to properly enforce the ACAA laws, then shouldn't this Applicant be an entitled to a review to determine if the agency is actually enforcing the ACAA as expected?

Equally, or more important than that is the question of the private right of action for the Air Carrier Access Act, which this Court has yet to weigh in on. Did Congress intend for the only right of action to be through the DOT? If that is the case, then their level of enforcement should be reviewable. If not, then there must be a private right of action.

These two questions are the two opposite ends of the coin. The big question that court must decide is to interpret what the court believes was the intent of Congress. Anyone reading the law created by Congress, 49 U.S. Code § 41705, will agree that Congress wanted and expected these laws to be enforced.

In the debate of whether the ACAA has a private right of action, the following needs to be addressed. The Supreme Court never addressed this issue and many Circuit Courts have been reluctant to address it for many years. It isn't settled law. This is probably the time for this court to review this issue, as it has now come to the forefront. Suddenly there are actual cases where the two sides of the argument can be seen so clearly, and the repercussions of the ambiguity in the law are staggering.

The determination of if there is a private action is that we look to Congress to see what their intent was. Congress had intent by creating the ACAA to stop discrimination on airlines completely. Those that say that there should be no private action, they explain that the DOT has a comprehensive enforcement scheme. Without that, they seem to agree there must be a private right of action. Everyone agrees that Congress wants these laws enforced properly. Wherever the

courts mention that there should not be a private right of action, they describe the DOT's comprehensive enforcement process, as a reason why they believe that Congress intended for the DOT only to enforce.

"The second step for determining whether Congress intended to create a private right of action is to examine the statutory structure within which the provision in question is embedded; if that statutory structure provides a discernible enforcement mechanism, the Court of Appeals ought not imply a private right of action because the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir. 2002)

The information herein will show that the enforcement mechanism is seriously lacking and they are certainly not enforcing anything, as to the literal translation of the word. Congress did not intend for that to happen. Included in the process is a right to a review of such enforcement. The Circuit Courts have denied a review of the DOT's lack of enforcement in both of my cases, saying that it is not in their jurisdiction. (*Abadi v DOT 2nd Circuit 21-2807*, & *Abadi v DOT DC Circuit 22-1012*).

This brings us back to the question of what Congress wanted. It cannot be argued in both directions at the same time. We believe that we can all agree that Congress wanted these laws enforced, and that there should be recourse for those who suffer from ACAA violations. If the Courts feel that they are not entitled to require the DOT to enforce, then they must believe there is another avenue of

enforcement. They cannot deny that Congress wanted this to be enforced. Maybe, the DOT was never set up for proper enforcement. That leaves the courts to enforce.

Does ACAA imply a private right of action? That is a question that has been asked over and over. Most Circuit Courts refused to address it for years. Eventually, many addressed it. At this point, I believe we have much more information as to the ACAA enforcement process than ever before. That information shows that some of the premise to say there is no private right of action has been a mistake. If we are to interpret the intent of Congress that should include a proper enforcement, one way or another. It is either through a review and requirement for the DOT to enforce by agency review, or a private right of action. The Courts cannot leave disabled people in a situation where they cannot fly on airplanes, and justly say that this was the intent of Congress.

In *BLUE CHIP STAMPS et al., Applicants, v. MANOR DRUG STORES, etc.* Supreme Court, June 9, 1975, we see the court's understanding and clarification of determining when there should be a private right of action, despite Congress not clearly implying it. It says, "We are dealing with a private cause of action which has been judicially found to exist, and which will have to be judicially delimited one way or another unless and until Congress addresses the question."

In that case you can see that although Congress did not expressly imply a private right of action, the courts implemented the intent of Congress as they interpreted it. In this case, courts that may have denied a private right of action were not privy to the facts of this case and the obvious reality that the DOT's

enforcement scheme is not extensive nor comprehensive, it actually has no teeth at all. Airlines that finally received notice of violation, continued to violate ACAA law against this Applicant immediately thereafter. They seemed to have no reason to be concerned. This case needs to be litigated and these issues need to be addressed.

In the following pages I will present my case as to why I believe that an agency failure to act is reviewable. I will also show why this failure to act, is exceeding the boundaries of agency discretion and the Court should overturn that decision and demand that the DOT take actionable steps to correct this rampant discrimination, that seems to have the DOT approval. Additionally, I will present some of the more prominent cases where the discussion of ACAA and a private right of action existed, and the courts clarified their thoughts and the basis for their decisions.

This is a landmark case in a new world with new problems. There is this new issue of the Corona Virus, which is generating new questions that should be addressed. The Court just ruled on several major vaccine issues, including an application from this Applicant. The issue here is that clear laws describe the appropriate way to treat the disabled, yet people with disabilities that cause them not to wear a mask face rampant discrimination, all with the blessings, encouragement, and approval of our government. The Circuit Court of Appeals has determined that it is not reviewable, and the government is given free reign to

violate the laws created by elected members of the legislative branch, and to give blessings to the discrimination.

I beg of this Court to spend the time to review this case and tell us all what the correct laws are. If the law says that the federal government has free reign and if they want to allow discrimination, that they can and I have zero recourse, then so be it. I try to show here why that is not the case. If I'm right, I believe it to be an important responsibility of this Court to set the record straight. Hopefully you will not throw this case out with the 99% of writs that are denied. There are thousands of people suffering because of this type discrimination, that can use the help, and the Court's clarification. If anyone watches the news, there's was least one big story per week regarding people with disabilities being denied their legal rights due to mask mandates and policies, during the height of the pandemic.

I understand that this court would prefer having such a debate with well educated lawyers on each side, and I can appreciate that. I'm confident that if the court accepts this application, that I would be able to quickly find a seasoned lawyer that has been in front of this court before, that would represent me on this.

### **STATEMENT OF FACTS**

1. To slow the spread of COVID-19, on January 21, 2021, President Biden issued Executive Order 13998, which directs the heads of certain Federal agencies to take immediate actions to require mask-wearing in domestic and international transportation.

2. On January 29, 2021, CDC issued an order directing conveyance operators, which includes airlines, to use best efforts to ensure that any person on the conveyance, such as an aircraft, wears a mask when boarding, disembarking and for the duration of travel. Recognizing that there are specific instances when wearing a mask may not be feasible, the CDC Order exempts several categories of persons from the mask mandate, including "a person with a disability who cannot wear a mask, or who cannot safely wear a mask because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.)" The Americans with Disabilities Act (ADA) defines a person with a disability to include a person who has a physical or mental impairment that substantially limits one or more major life activities.

3. Applicant has been diagnosed with a disability, specifically sensory processing disorder, and cannot wear a mask. His senses go into overload when he wears anything on his face or head, including glasses, sunglasses, or a baseball cap. This is a permanent condition that he had his entire life and will continue to have for the remainder of his life. He carries around a doctor's letter clarifying that he cannot wear a mask, and has sent a copy to every airline operating in the U.S. (Attached in Appendix is the Doctor's letter and a redacted medical chart on pages 44 & 45 respectively).

4. As per ADA guidelines and Air Carrier Access Act ("ACAA") guidelines, which are almost identical in these aspects, this Applicant should be exempt from wearing a mask. See the ADA and Face Mask Policies \_ Southeast

ADA Center, where it clearly defines the sensory disability, and states that such a person should be exempt (Appendix page 21). In any case, sensory processing disorder, when activated, creating sensory overload, it limits almost all major life activities, as the Applicant cannot function.

5. In clarifying the definition of disability, 28 CFR § 36.105 (1) says "Physical or mental impairment means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine."

6. Applicant's disorder affects the body system related to the sense of touch, specifically, and is included in the above definition of disability. Touch is the ability to sense pressure, vibration, temperature, pain, and other tactile stimuli. These types of stimuli are detected by mechanoreceptors, thermoreceptors, and nociceptors all over the body, most noticeably in the skin. These receptors are especially concentrated on the tongue, lips, face, palms of the hands, and soles of the feet. The law recognizes that a disorder in the important sense of touch severely limits many major life activities.

7. Only a disabled passenger that poses a direct threat can be denied access to fly. Applicant already had Covid, as evidenced in the same doctor's letter, therefore without any symptoms, he would not pose a "direct threat" to justify an airline to deny him access due to his disability, and thus his inability to wear a



mask. The ACAA defines this term as follows: "Direct threat means a significant risk to the health or safety of others..." (14 CFR § 382.3 – Appendix page 3). As the CDC states in their guidance that "Covid reinfection is rare," and therefore there should not be any direct threat without obvious symptoms. (Attached in Appendix page 11)

8. Initially, in response to COVID-19, U.S. and foreign air carriers generally have implemented policies requiring passengers to wear masks onboard aircraft even before the issuance of the Executive Order and the CDC Order. Most carriers have adopted policies that expressly allow "no exceptions" to the mask requirement other than for children under the age of two. People with disabilities that could not wear masks were not permitted to fly, in direct violation of the Air Carrier Access Act (ACAA), which is a set of laws that makes it illegal for airlines to discriminate against passengers because of their disability. Applicant filed many complaints with the DOT, but to no avail.

9. Finally, on February 5, 2021, the DOT issued a directive "Notice of Enforcement Policy ("the NOTICE")," (Appendix page 13) sent out to all the airlines by The Office of Aviation Consumer Protection ("OACP"), a unit within the Office of the General Counsel of the U.S. Department of Transportation. The directive states, "OACP will refrain from taking enforcement action against an airline for a period of up to 45 days from the date of this notice, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued."

10. In this directive the DOT deliberately conveyed an ambiguous message. It encouraged and directed airlines to implement procedures, rules, and processes to comply with ACAA laws for disabled passengers. While the directive states that airlines must "revise their mask procedures as needed to comply with the law," the directive itself entitles and encourages the airlines to create multiple procedures and requirements, that airlines have been designing to complicate the process and thus almost completely ban any person that cannot wear a mask due to a disability from flying on an airplane. These are in direct violation of ACAA laws. Either the DOT encourages these unlawful practices, or these ideas were specific to certain limited cases, where it would be appropriate. In either case, creating blanket rules and requirements for all disabled, expecting all people with mask disabilities to jump through hoops in order to be able to fly, is unlawful, and is clear discrimination as per the ACAA.

11. The ACAA laws (from 382.17 to 382.35) (Appendix page 3) describe the following actions as discrimination, and many of these are listed in the NOTICE as allowed and appropriate:

a. 382.17 "May carriers limit the number of passengers with a disability on a flight? As a carrier, you must not limit the number of passengers with a disability who travel on a flight." The NOTICE says that they can.

b. 382.19 "May carriers refuse to provide transportation on the basis of disability? As a carrier, you must not refuse to provide transportation to a passenger with a disability... except... You may refuse to provide transportation to

any passenger on the basis of safety, as provided in 49 U.S.C. 44902. The 49 U.S.C. 44902 refers to safety issues such as someone who doesn't consent to a TSA search of themselves or their items. They mention another scenario, which also refers to the safety of the flight. Neither refers to wearing a mask. It then says you can refuse a passenger who poses a "direct threat," which is established law that requires a significant risk, which also won't apply in a case where there are no symptoms, and especially this Applicant who has natural immunity.

c. 382.21 "May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?" You cannot, unless, again, the person is determined to pose a direct threat.

d. 382.23 "May carriers require a passenger with a disability to provide a medical certificate?" Essentially, you cannot require a medical certificate unless the "medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight." Also, if there's a direct threat of a communicable disease.

e. 382.25 "May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?" No, except in special circumstances. The NOTICE says that it's permitted.

f. 382.33 "May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?" No, except in special circumstances.

12. Many airlines flat out denied Applicant, and anyone similarly disabled to travel without a mask, period. Others were a bit more tactful and required Applicant to get a doctor's approval to travel, ten days advance notice, repeated updates of doctor's notes, special forms filled out in special ways with the doctor's seal, and/or many other complicated processes to discourage and keep the disabled who cannot wear a mask from traveling on their flights.

13. Attached, (Appendix page 50) is a list of all the airlines operating in the United States that were contacted by Applicant. The responses are listed on the list and their emails will be submitted as evidence together with the initial brief. To avoid overwhelming the Court with too many documents, I put together just a few of the responses, a sampling, to give a general idea. In the appendix to the initial brief, I can provide all the correspondence. As listed, you can see that around 50 of them were in violation, and therefore complaints were filed. Notice how their responses, which are full-blown discrimination, are copied to Alexander A. Taday III, Director of Civil Rights Advocacy, Aviation Consumer Protection Division, US Department of Transportation. They have nothing to fear, as the DOT has their back. They say in the email that they will not allow me to travel or they put unlawful requirements, and they copy the email to the DOT person in charge of enforcement, but he never responds. He doesn't say, "hey, one minute here, that's discrimination." Nope, he lets it go and maybe in a year or so he will say it's a problem, but that's too little and too late.

14. The DOT has received over 50 complaints on all different airlines from this Applicant alone and has barely addressed the bulk of them yet. The earlier ones are dated December of 2020 and January 2021. Addressing a complaint about a temporary virus situation a year or two later, when hopefully the virus is gone, cannot be considered a proper action and resolution of the complaint. Encouraging and allowing airlines to create all these discriminatory policies against the law, should in itself be considered discrimination.

15. A typical DOT complaint process can easily take two years. This Applicant filed an unrelated wheelchair preboarding complaint in January of 2019. The airline, American Airlines, admitted fully to the violation of the ACAA laws in this incident. It took two full years to complete an investigation and email the resolution. If this is a good example of their timeframe, it will take years to address this, and there is no way for disabled passengers to stop the discrimination (Appendix page 53).

16. Recently Applicant received five responses to complaints filed in 2020. In the attached responses (Appendix Page 96) the DOT found three of the airlines to be in violation of the ACAA. The DOT agrees that not allowing Applicant to fly is a violation, they are just not prepared to do anything about it. They pretty clearly said this in their response. The DOT is not debating the issue of discrimination. The DOT notified the airlines that what they did was and is discrimination.

17. The DOT is refusing to enforce these laws and even refusing to notify the airlines immediately, in real time, that this is discrimination, rather they

choose to send it a year or two later, with a response that the airlines know they can ignore. When Applicant complained, the DOT essentially says, "wait your turn." For over a year this Applicant must wait to get a confirmation that his rights were violated and for the airlines to begin being notified that this was a violation.

18. YOU WILL ALSO SEE FROM MY FRIEND'S CORRESPONDENCE WITH DOT, (Appendix page 59) THAT THE AIRLINE IS NOT BACKING DOWN, EVEN AFTER GETTING THE VIOLATION. Why would they back down when there's no enforcement at all?! I have had similar experiences with my complaints and the airline's responses.

19. In summation, the Applicant has a disability and cannot wear a mask. The airlines with the encouragement of the DOT, through the NOTICE, are discriminating against Applicant. After multiple complaints and over a year later, the DOT did nothing and refuses to say anything to the airlines to require them to follow ACAA laws. In their reply to the motion in Circuit Court, they said essentially, we have a lot of complaints, wait your turn. The Applicant needs to travel for his income, and because he cannot travel, he has not had any income. His unemployment ended September 5, 2021. (Appendix Page 57)

20. The 2<sup>nd</sup> Circuit Court of Appeals denied the petition as you will see below in the procedural history. They treated it as a writ of mandamus, which can be denied without any explanation, as it is an extraordinary writ.

21. They have not clarified their position, but based on their actions and on the words of the court clerk, they believe that there's no such thing as a petition

for review of an agency decision, when it refers to a FAILURE TO ACT. I presented to them multiple times that the Administrative Procedure Act ("APA") laws clearly states that any person adversely affected or aggrieved by agency action, see 5 USC Ch. 7: § 702-706, including a "failure to act," is entitled to judicial review, and as confirmed in Heckler v. Chaney, 470 US 821 - Supreme Court 1985.

22. In 5 U. S. C. § 551( (13) it describes the definitions for the APA laws. It says, "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or **failure to act.**"

23. Congress was clear when the laws were created, and the Supreme Court case law is clear that failure to act is a proper cause for review, and that Applicant is entitled to such a review.

24. Yet the both Circuit Courts (2<sup>nd</sup> & DC) refused to even accept a petition for review at all for a failure to act. The 2<sup>nd</sup> Circuit deemed it a writ of mandamus, and denied it without explanation of why and without explaining why they would not allow a petition for review for failure to act. The DC Circuit also deemed it a writ of mandamus, but upon my protest in a motion, they denied the entire review outright, saying it was not in their jurisdiction.

### **PROCEDURAL HISTORY**

25. This case, 21-2807 ABADI v. DEPARTMENT OF TRANSPORTATION was filed in the 2<sup>nd</sup> Circuit Court of Appeals with a petition to review an agency inaction, but was then filed as a writ of mandamus, filed together with an IFP motion.

26. The case was sent in to the Court on Nov 1, 2021, but was only docketed on Nov. 9, 2021, because the clerk's office refused to file a petition for review on an agency's failure to act, saying that there is no such thing.

27. After changing it to a writ of mandamus, the case was finally filed. Subsequently, I filed a motion for the court to clarify which is appropriate.

28. Afterwards, on Nov. 9, 2021, I filed an emergency motion of preliminary injunction.

29. On November 17, 2021, the DOT filed an opposition to the emergency motion.

30. On November 17, 2021, I filed a Reply to Respondent's Opposition.

31. The emergency motion was denied by the Court on Nov. 18, 2021. It was referred to three-judge panel, but without any timeline. I was told that it will most likely be heard when the petition itself is heard.

32. Finally, on January 27, 2022, a final mandate was filed by the court closing the case and denying the petitions and motions.

33. On January 23<sup>rd</sup> 2022, Applicant attempted to file a petition for review for a failure to act, against the DOT in the DC Circuit. Again, the clerks refused to file such a petition and went and filed it as a writ of mandamus.

34. Applicant filed a motion the same day requesting that to be corrected and to change it to a petition for review.

35. On April 15, 2022 the DC Circuit dismissed my case and all the motions as moot.



## SUMMARY OF THE ISSUES

36. Applicant is part of the disabled class, as per ADA and ACAA laws, as he has sensory processing disorder, and cannot wear anything on his face or head, including a mask and a face shield.

37. Applicant has been having difficulty in multiple venues not being allowed to enter public accommodations, and not be allowed to board, planes, trains, buses, and even ride-share vehicles.

38. Applicant filed multiple complaints in different states to their human rights commissions against all types of public accommodations.

39. NYU Langone Health in New York, Applicant's own hospital, refused to allow him to enter any of their facilities for essential medical care without a mask, and in one instance, had the police remove him.

40. Applicant filed over 50 complaints for disability discrimination to the DOT for violations of the ACAA, with zero resolution or intervention.

41. All the agencies that help with the complaints are wonderful, however without any judicial declaration, Applicant and those similarly disabled will continue to suffer.

42. Agencies have complex and lengthy processes. It can easily take years before any results. Many people, lawyers, businesses, and even employees at the human rights commissions are convinced that Covid is a scary pandemic and therefore every situation is a direct threat. You cannot convince them otherwise.

43. This Applicant does not debate the dangers associated with Covid. It is not a contradiction to believe that Covid is dangerous and to simultaneously believe and follow the disability discrimination laws.

44. All the work that they are doing to process these dozens of complaints are great for the long-term, for the next pandemic, but for now, it's practically useless. How do I and my fellow disabled people go out and do what regular people can do?!

45. ONLY THIS COURT CAN ONCE AND FOR ALL DECIDE AND CLARIFY THE QUESTIONS HEREIN. Only this court can stop the discrimination and the suffering. Not being able to go anywhere, and not having income is extremely painful and difficult. It is certainly irreparable harm. No one should know from such pain. History will look back on these times and judge the compassion and decency of the American people during these times.

46. The questions that this case brings out is the following: The DOT was put in charge by Congress of the ACAA laws, exclusively. Should the DOT be required to notify, clarify, and declare that the ACAA discrimination laws have not changed, and airlines must follow them as written?

47. As required to include the following in Rule 14.1 g(ii), this case was brought to the 2<sup>nd</sup> Circuit Court of Appeals initially, as that is the appropriate venue for a petition for review of a federal agency, and Applicant/Applicant is a resident of New York City, and thus the 2<sup>nd</sup> Circuit is appropriate.

48. When they refused to accept the case, Applicant then brought it to the DC Circuit, as is his right.

49. I asked the Circuit Court for the simplest thing. I asked either for a letter from DOT, or a declaration by the Court. Just tell the world that America will not allow disability discrimination. I have been dealing with this for over a year, and I cannot get anywhere. Discrimination is everywhere, and it's sanctioned by the ones in charge. I'm hitting a brick wall on every angle that I try.

### **ARGUMENTS**

50. WHY THE COURT SHOULD GRANT THIS WRIT: The first order of business is to convey why this court should grant this writ, as a petition for a writ of certiorari will be granted only for compelling reasons.

51. In the Rules of the Supreme Court of the United States, Rule 10 (C), it states as a reason to grant certiorari as follows; "(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.'

52. This decision of the Circuit Courts not to accept a failure to act as an APA violation and to only allow it as a writ of mandamus conflicts with wording of the APA laws itself, and conflicts with this court's opinion of this in multiple case law, as will be shown herein.

53. Additionally, this writ should be granted because of Rule 11, which says a writ can be granted "upon a showing that the case is of such imperative

public importance,” and that is even in a case where there was no final judgment yet. Certainly, in this case, where the final judgment was made, the court should grant a writ of certiorari.

54. IMPERITAVE PUBLIC IMPORTANCE: Both issues are extremely important. Knowing if a person may request a review of an agency's failure to act, affects so many people, and so many agencies. The discrimination against the disabled that is rampant on almost all airlines affects hundreds of thousands of disabled people, if not millions. Having public and official discrimination of our disabled as a normal way of business affects every American citizen. Discrimination against an entire race and enslaving them, was not only affecting the slaves themselves. Every American citizen was affected, involved, and responsible. We went to war and fixed that wrong. It is this court's duty to shed light and make a determination regarding this discrimination to have it stopped immediately.

55. ACAA and the right to a private action has been an ongoing debate since forever. It is about time the Supreme Court puts the issue to bed and renders a clear decision.

56. FAILURE TO ACT: The airlines have responded in most of the over 50 complaints. Many of them copied the DOT on their emails to Applicant. These emails were unapologetic, confident, and certain that their actions were within the law and not discrimination. By the DOT not countering their unlawful responses, by not responding to that to say, “hey, that's discrimination,” there's no chance that anything will change. The DOT abdicated its responsibility. This is an example of

a failure to act under APA, if there is any. Attached (Appendix page 63) is a sampling of their responses and blatant disregard of the law, most included the DOT in their correspondence, with no reply or response from the DOT.

57. REVIEWABILITY OF AN AGENCY INACTION/FAILURE TO ACT:

This case was brought to both the 2nd Circuit Court and the DC Circuit Court as a petition for review on an agency inaction, but was classified as a writ of mandamus initially. Although the more typical cases for judicial review are in situations where the agency **action** is in question, in this case the issue is actually the **inaction** of the agency that Applicant claims is causing his grievances. Applicant is entitled to judicial review, based on APA laws "Any person "adversely affected or aggrieved" by agency action, see 5 USC Ch. 7: § 702 (Appendix page 9), including a "failure to act," is entitled to "judicial review..." and as confirmed in Heckler v. Chaney, 470 US 821 - Supreme Court 1985.

58. AGENCY ACTION AS A FAILURE TO ACT: In these laws, a failure to act is considered an agency action that is reviewable by right. In 5 U. S. C. § 551(13) it describes the definitions for the Administrative Procedure Act ("APA") laws. It says, "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act."

59. This is not a writ of mandamus, which is considered an extraordinary writ, and where the court can just deny it without explanation.

60. NO JUSTIFICATION FOR INACTION: While in Heckler v. Chaney, the Court was reluctant to review the FDA's decision for inaction, that was because

there were other agencies involved that could have acted, this case is very different. In this case there is the inaction of the DOT by not following up on any of my complaints, coupled by the DOT's unlawful directive "Notice of Enforcement Policy" dated Feb. 5, 2021, sent out to all the airlines by The Office of Aviation Consumer Protection (OACP). In this directive, the DOT seems to encourage airlines to create complicated rules and regulations to make it difficult to almost impossible for a person with a disability that cannot wear a mask to board a plane. Airlines are using this enforcement directive to justify their rules and procedures, while when a person complains to the DOT, there's no action taken. This inaction together with the directive is in itself causing the very grievances alleged by the Applicant.

61. THE DANGERS OF INACTION: In this case, there's only one agency that addresses airline complaints, and regulations, and if that agency refuses to act, the citizens suffer. To understand this point, try to imagine if for some reason all airlines decided to discriminate against a specific race or religion, and refused to allow them to fly, wouldn't the DOT be expected to do something immediately and not just put it into the same queue? Wouldn't the Courts need to review their inaction and correct such a horrible situation?!

62. In 5 USC Ch. 7: § 706 it states, "The reviewing court shall—(1) compel agency action unlawfully withheld or **unreasonably delayed**; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law..."

63. I think we can all agree that if there is consistent rampant discrimination against an entire class that cannot travel, then the DOT is expected to address it much quicker than a year or two later. There isn't a case of unreasonably delayed worse than this. The DOT is the only enforcement venue designated by Congress. If they do not act, there's no alternative option for the victims of the discrimination. It has been over a year that over 50 of around seventy airlines refused to allow Applicant to travel. It will continue indefinitely without clear and concise action by the DOT.

64. CDC AND DOT ABUSE OF AUTHORITY: The DOT in its feb 5<sup>th</sup> Notice of Enforcement Policy writes the following: "To ensure that only qualified persons under the exemptions would be able to travel without a mask, the CDC Order permits operators of transportation conveyances, such as airlines, to impose requirements, or conditions for carriage, on persons requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the operator. The CDC Order also permits operators to require protective measures, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or seating or otherwise situating the individual in a less crowded section of the conveyance, e.g., aircraft." Effectively saying that the ACAA laws limiting airlines from extra unnecessary requirements is no longer in effect. Neither the DOT nor the CDC have such power to cancel the

ACAA laws. These are federal agencies of the Executive Branch, and they do not make the laws. They must follow the laws made by Congress.

65. CDC & DOT DELIBERATE AMBIGUITY: The Notice of Enforcement Policy also states the following: The Order notes that individuals may remove masks “who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask.” Also, individuals with acute illness may remove the mask if it “interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.” CDC will issue additional guidance regarding persons who cannot wear a mask on the basis of disability. Individuals who have a physical or mental impairment that substantially limits one or more major life activities are individuals with a disability for purposes of the ACAA and Part 382.22.” Essentially suggesting, with some ambiguity, that for now people with disabilities that cannot wear a mask must still wear a mask, otherwise airlines are permitted to discriminate against them and not allow them to fly. The CDC and the DOT cannot change the law.

66. MORE AMBIGUITY: Then the THE NOTICE seems to backtrack within the same notice. It writes as follows: “Part 382 allows an airline to refuse to provide air transportation to an individual whom the airline determines presents a disability-related safety risk, provided that the airline can demonstrate that the individual would pose a “direct threat” to the health or safety of others onboard the aircraft, and that a less restrictive option is not feasible. To support a determination



that an individual poses such a direct threat, the airline must make "an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence," in order to ascertain "(i) [t]he nature, duration, and severity of the risk; (ii) [t]he probability that the potential harm to the health and safety of others will actually occur; and (iii) [w]hether reasonable modifications of policies, practices, or procedures will mitigate the risk." That seems like the laws must be followed. Then continues to say, "Furthermore, the Department's regulations permit the airline to impose reasonable conditions, restrictions, or requirements on a passenger who has a "medical condition" that may cause the passenger to pose a risk to the health and safety of others." While this is technically correct and within the law in certain situations that there are direct threats, it is used in this context as a license for airlines to throw all types of rules and requirements, in order to not allow disabled passengers to travel, by saying they can apply that to any and all disabled.

67. ACCORDING TO SOME APPLICANT HAS NO ALTERNATIVE MEANS OF ACTION: In *Love v. Delta Air Lines*, 310 F. 3d 1347 - Court of Appeals, 11th Circuit 2002, the Court concluded that the ACAA did not create by implication a private right of action in a federal district court for a disabled individual alleging violations of its provisions. "Congress is, of course, free to protect disabled air passengers by virtually any means it chooses. It certainly may provide them with the right to sue in a district court for ACAA violations. Yet the legislature has not done so, and has instead created an elaborate administrative

enforcement regime with subsequent, limited judicial review of the DOT's actions. Under these circumstances, the teachings of Sandoval plainly preclude a federal court from implying such a right of action." It is, therefore, Applicant's only right of action to petition for a review from the 2<sup>nd</sup> Circuit Court of Appeals. Now, that the motion was denied, Applicant's only recourse is at the Supreme Court of the United States.

68. CONGRESSIONAL INTENT: What we learn from this case (*Love v. Delta*), is that the Supreme Court looks at the Congressional intent that is obvious in a specific set of laws, and makes their determination accordingly. The Supreme Court understood that Congress expected "an elaborate administrative enforcement regime," with the purpose of properly and thoroughly enforcing the ACAA laws. Now, if someone was denied potato chips on his flight and complains, there may be room for agency discretion to decline from pursuing the claim, but from here we see that Congress expected a robust and effective enforcement regime, to a point where it relied completely on the DOT to enforce. Without giving a right for an alternative course of action, Congress was saying, we expect the DOT to handle it properly, hence the opportunity and even the right for a thorough judicial review.

69. EXPECTATIONS FROM CONGRESS FOR THE ACAA: The right for review is somewhat limited, as every agency is entitled to discretion, and especially when it is about a failure to act. Completely ignoring an entire sequence of laws and allowing disability discrimination on an entire category of disabilities with complete

indifference, however, is crossing the line. Congress most certainly would not have given the DOT this kind of power over a set of laws, without expecting them to be enforced. In this situation, things are so much worse, because the DOT themselves encouraged these violations in the NOTICE, causing much of the discrimination directly.

70.    **TRAINING, EDUCATION, & ENFORCEMENT:** In Title 49 § 41706 Transportation, it says, "provided that: "(b) **BEST PRACTICES.**—After the date the report is submitted under subsection (a), the Secretary of Transportation, based on the findings of the report, shall develop, make publicly available, and appropriately disseminate to air carriers such best practices as the Secretary considers necessary to improve the reviewed training programs." The same page and the page before describe training, education, and the development and dissemination of a bill of rights for disabled passengers to all airlines. Congress could not be more clear, between authorizing and requiring the DOT to do all this and the enforcement thereafter. Congress expects the DOT to do what it takes to make it clear to airlines that they must not discriminate against someone due to their disability, and to take pragmatic steps to ensure success. That is all that I have been asking for all along. All I wanted was for the DOT to send out another letter clarifying that denying a disabled person who cannot wear a mask access to fly is a violation of ACAA. They refused.

71.    **MY ONLY GOAL IS FOR THIS TO BE RESOLVED:** Even after I filed the petition for review in the 2<sup>nd</sup> Circuit, I immediately emailed Mr. Taday, the

Director of that office at the DOT, (attached Appendix page 58) to let him know that I filed and explained to him that "my only goal here is to resolve these issues....[and] I'm open to discuss and try to figure out a resolution to these issues, if we can. Otherwise, I look forward to the Judge's determination and decision." Of course, he didn't respond. All I ever wanted is clarity from the DOT that the rules are still in effect. I got nothing of the sort. I got a 22-page opposition to my motion, essentially saying "wait in line." Well, I waited in line, I finally got to the front of the line, and nothing happened. They didn't do anything.

72. DOT MUST CARE FOR THE DISABLED: When there is only one avenue of recourse, the Supreme Court determines that the agency of recourse is then responsible to the people under their jurisdiction. "We reasoned that because the prisoner is unable " `by reason of the deprivation of his liberty [to] care for himself,' " it is only " `just' " that the State be required to care for him." DeShaney v. Winnebago County Dept. of Social Servs., 489 US 189 - Supreme Court 1989. The DOT is the only agency that can help disabled people on airplanes. The police, the firemen, the courts, the ATF, and every other 3-letter agency must keep out. It is exclusively the DOT. The disabled person is unable to care for himself in relation to disability discrimination on airplanes, it is only "just" that the DOT be required to care for him/her.

73. DISCRETION VS. FAILURE TO ACT: While an agency is entitled to its discretion, not addressing an important issue such as disability discrimination within a reasonable time is unacceptable. It is imperative for the courts to compel

an action within a reasonable enough timeframe that will at least discourage airlines from violating the laws. Requiring them to clarify the laws relevant to discrimination during Covid, to correct the illegal statements and/or misstatements from their Notice of Enforcement Policy, is within the court's jurisdiction and responsibility.

74. PUBLIC RIGHT OF TRANSIT: The Supreme Court consistently applies strict scrutiny to restrictions on the right to interstate travel. It has long "recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). Congress affirmed the constitutional right to fly for disabled Americans by enshrining it into statute: "A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board ... before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals." 49 USC § 40103.

75. FLYING MAY BE THE ONLY PRACTICAL MEANS OF TRANSPORTATION: Free movement isn't restricted to using highways. The large distances covered rapidly by airplanes aren't feasible by ground transportation. To

drive from New York to Los Angeles, would take over 40 hours each way, not counting stops to eat, get gas, use the bathroom, and sleep. Trips like that are unreasonable without airplanes. "To make one choose between flying to one's destination and exercising one's constitutional right appears to us, as to the Eighth Circuit, *United States v. Kroll*, 481 F.2d 884, 886 (8th Cir. 1973), in many situations a form of coercion, however subtle. ... While it may be argued there are often other forms of transportation available, it would work a considerable hardship on many air travelers to be forced to utilize an alternate form of transportation, assuming one exists at all." *United States v. Albarado*, 495 F.2d 799 (2nd Cir. 1974). The Eighth Circuit held in *Kroll* that "flying may be the only practical means of transportation;" when limited, it deprives an individual of the right to travel.

76.     **DISCRIMINATION IN SPITE OF HEALTH CONCERNS:** Even if we were to say, for argument's sake, that every person is a direct threat of Covid, it would still be discrimination to allow non-disabled with a mask and not allow the disabled without a mask. The definition of discrimination is normally, "the unjust or prejudicial treatment of different categories of people or things." Why are we treating the disabled differently? You would need evidence from real studies that the mask will somehow take away the direct threat, while those without a mask will continue to pose a direct threat, even if they already have natural immunity. It is an absurd premise and there is no data to back it up.

77.     **DISCRIMINATION BY TREATING DIFFERENTLY:** For instance, if you were to create a scale of 1-100 for threat levels, and say the person who never

had covid, without a mask was a threat level of 15. When we give him a mask, we reduce him to a threat level of 8. Now let's take a person who already had Covid, and as the CDC says and the data proves, that Covid reinfection is rare. There's a very low chance of him getting it again. Even when he does not wear a mask, he is certainly lower than an 8 on such a scale. The ACAA requires the disabled to have an individual assessment. This Applicant should be approved to fly without all these demands, just like any other person. Otherwise, it is discrimination as defined by law.

78. MASKS APPROVED: We are speaking about the overwhelming mask types which are the disposable surgical ones and the cloth ones. While these may provide some small amount of protection, there is no possibility that that protection is stronger than natural immunity. So, if you allow certain people with masks that have a certain level of risk, but do not allow another disabled person without a mask, but who has a much lower level of risk, that is discrimination, period.

79. DOT IS REQUIRED TO CLARIFY OUR RIGHTS: The DOT is required by 49 U.S. Code § 41705 - Discrimination against handicapped individuals (B) to "ensure the availability and provision of appropriate technical assistance manuals to individuals and entities with rights or responsibilities under this section.

80. DOT RESPONSIBLE FOR EVERY COMPLAINT: The DOT is the only agency with the authority to oversee the compliance to the ACAA disability discrimination laws. The DOT is responsible to investigate every complaint as it

says in 41705 C.1 "The Secretary shall investigate each complaint of a violation of subsection (a)." Subsection (a) reads as follows: "In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment"

81. CONGRESS EXPECTED DOT TO HANDLE ACAA COMPLETELY:  
§ 41705 and the ACAA laws describe the DOT's responsibility to implement these laws, oversee its compliance, supply training and education, and deal with every single complaint. There's no ambiguity there. Allowing blatant disregard to these discrimination laws, and even encouraging it, are not at all the intent of Congress. This review should have been done in either Circuit Court, and the DOT should have been compelled to resolve the issue.

82. AIRLINES CANNOT BE GIVEN A FREE PASS: I live in New York City. We have the New York City Police Department in charge of murders, for example. If there is a murder and the police choose to ignore it, that would be unacceptable. The Police are the ones responsible for this, this is extremely important, and you can't just ignore it. On the other hand, a person who calls to report seeing someone J-walking will probably be ignored. That is because of the police's discretion. The Congress gave the DOT responsibility to address every



complaint and to implement, enforce, and notify of the ACAA laws. Disability discrimination laws are a big deal in America. The DOT cannot just give every airline a FREE PASS.

83. AIRLINE'S BLATANT DISREGARD FOR ACAA: The THE NOTICE writes, "In short, both the CDC Order and Part 382 permit airlines to require passengers to consult with the airline's medical expert and/or to provide medical evaluation documentation from the passenger's doctor sufficient to satisfy the airline that the passenger does, indeed, have a recognized medical condition precluding the wearing or safe wearing of a mask." I submitted the attached doctor's letter to every airline, and over fifty were not willing to comply. The ambiguity and the lack of a clear declaration from the DOT, coupled with zero enforcement, practically gives the airlines approval to ignore the laws and discriminate as they wish.

84. DOT REFUSES TO GET INVOLVED: The DOT refuses to enforce those laws, refuses to address the complaints regarding those laws in a timely manner, and even encourages airlines to violate those laws. The lower courts have all been addressing cases in this regard, but without declaring that these laws are still applicable during Covid, and without awarding an injunction to stop the discrimination.

85. DOT DOES NOT AGREE WITH CONGRESS? It is reasonable to assume that the DOT disagrees with these laws during this Covid pandemic, and

therefore chooses not to enforce them and not to even mention them regarding the wearing of masks on airlines, when a person's disability does not allow him to. The following is some of the evidence showing this:

a. First is the fact that the DOT did not make any public statement until February 5, 2021. People were suffering from this for many months prior.

b. Second, when the DOT finally put out its Notice of Enforcement Policy from the OACP, it gave all airlines carte blanche to create rules and regulations, that are illegal in the AACA.

c. Third, when this Applicant had the audacity to bring the DOT to the Court of Appeals for a writ of mandamus and/or a petition of review of an agency failure to act, and all he asked for was a simple letter confirming the laws already legislated, the DOT instead are fighting tooth and nail, writing up tens of pages of filings, just not to have to admit that these actions of discrimination are illegal. In a similar type of case, Telecommunications Research and Action Center v. FCC, 750 F. 2d 70 - Court of Appeals, Dist. of Columbia Circuit 1984, the agency immediately began "moving expeditiously to resolve the pending... claims," rather than fight it all the way to the Supreme Court. In this case, the DOT will fight this to the end.

86. DOT PRIORITIES: Being that the only course of action available is from the DOT, and the only recourse is complaining to the DOT, and Congress entrusted the DOT to oversee, monitor, investigate, and instruct about the entire ACAA laws, then when there's blatant and rampant disregard for such important laws, the DOT should be responsible to clear this issue up, not do the opposite. They

should be rushing to deal with it, rather than joining with the TSA, the DOJ, and others to fight to crush the opposition. They complained in their opposition filing in the 2nd Circuit, that they're overwhelmed with complaints. Well, here's a brilliant idea, send out a revised THE NOTICE saying the true laws and upholding ACAA, and the complaints will instantly be cut in half.

87. ON THE OTHER HAND, IF CONGRESS INTENDED FOR DOT NOT TO BE THE ONLY COURSE OF ACTION, Applicant should be entitled to sue the airlines in federal or state court. Then the DOT can claim that it is not their problem and the Circuit Courts can say to me to go sue the airlines directly, which I would do immediately.

88. This Court needs to clarify which is it.

89. ELABORATE ADMINISTRATIVE ENFORCEMENT REGIME:

90. THE ONLY WAY A COURT EVER DECIDED THAT ACAA HAS NO PRIVATE RIGHT OF ACTION IS BASED ON THE ASSUMPTION THAT THE DOT HAS AN ELABORATE ADMINISTRATIVE ENFORCEMENT REGIME; HOWEVER, THE FACTS SHOW THAT THIS IS NOT THE CASE.

91. As in Love v. Delta it says that the DOT "created an elaborate administrative enforcement regime with subsequent, limited judicial review of the DOT's actions. Under these circumstances, the teachings of Sandoval plainly preclude a federal court from implying such a right of action."

92. We can learn from this to the opposite, that if the circumstances are different, and there is barely any enforcement, the Sandoval would not apply.

93. THE TWO IDEAS ARE DIAMETRICALLY OPPOSED:

94. If you say that the DOT is in charge completely and no one else can interfere, and there's no other right of action, then you need to allow a review of their required enforcement actions or inactions.

95. If the enforcement is lacking and the DOT just turns their eyes away and ignores the violations, then the people must be entitled to a private right of action.

96. In the Tenth Circuit they used similar logic to decide that ACAA does not have a private right of action. They rely on this non-existent elaborate enforcement regime.

97. "Here, Congress established an administrative enforcement scheme for violations of the ACAA, authorizing individuals (like Ms. Boswell) who allege ACAA violations to file complaints with the Secretary of Transportation and to appeal the Secretary of Transportation's orders to the courts of appeal. *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263, 1269 (10th Cir. 2004).

98. APPLICANT IS ENTITLED TO RELIEF FROM THIS COURT:  
Unfortunately, the DOT are doing everything to encourage airlines to discriminate, as defined in the ACAA laws, Therefore, this Applicant appropriately filed the writ of certiorari for this court to resolve these questions, and review the decisions of both the DC Circuit and the 2<sup>nd</sup> Circuit. It is up to the Supreme Court to make the law clear, and to let the entire country know that the laws created by Congress cannot be sidelined and ignored.

## **RELIEF SOUGHT**

Applicant prays for the Court to require the Circuit Court to review the agency's inaction as a right stemming from the APA laws, to declare that the ACAA laws are still in effect and must be adhered to, and require the Circuit Court to enjoin and require the DOT...

a) to immediately require each airline, train, and bus company to follow the ACAA laws for disabled people, to treat them properly with respect, and to allow them to travel without a mask when the disability doesn't permit wearing one.

b) to ensure that each disabled person and each disability is addressed and evaluated individually, based on their specific situation, and to not allow airlines to add extra rules and demands that would not apply to that specific passenger, as described in the ACAA. (such as requiring a medical clearance for a person with a sensory disorder).

c) to set up a swift process for mask related complaints by the disabled, with quick action, and a decisive response.

d) to follow up with investigative and enforcement procedures, with timelines, to eradicate this rampant lawlessness, once and for all.

e) to provide Applicant with a letter stating that he should be entitled to fly without a mask due to his disability.

f) and/or to declare that Applicant has a private right of action for ACAA complaints, at least when the DOT does not resolve quickly.

g) and any other relief the court deems necessary and/or appropriate.

CONCLUSION

WHEREFORE, Applicant requests that this court grant this writ of certiorari, and respond and resolve the questions and issues herein.

Respectfully submitted on June 28, 2022

A handwritten signature in black ink, appearing to read 'Aaron Abadi', written in a cursive style.

AARON ABADI, Applicant  
82 Nassau Street Apt 140  
New York, NY 10038  
Tel 516-639-4100  
Email: aabadi@optonline.net