

No. 22A_____

IN THE
SUPREME COURT OF THE UNITED STATES

KELLY ILCZYSZYN, SYDNEY ILCZYSZYN, LOGAN ILCZYSZYN, AND HANNAH ILCZYSZYN,
Applicants,

v.

SOUTHWEST AIRLINES CO.,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA**

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December 27, 2022

PARTIES TO THE PROCEEDINGS BELOW

Applicants Kelly Ilczyszyn, Sydney Ilczyszyn, Logan Ilczyszyn, and Hannah Ilczyszyn were plaintiffs in the district court proceedings, appellants in the court of appeal proceedings, and petitioners in the California Supreme Court.

Southwest Airlines Co. was the defendant in the district court proceedings, the respondent in the court of appeal proceedings, and the respondent in the California Supreme Court.

Christina Green, Jenna A. Harrison (King), Cynthia L. Jenkins, Christopher Krawec, Kristina Lynn Koester (Klotz), and Joseph Walker were defendants in the district court proceedings but were dismissed from the lawsuit prior to trial.

RELATED CASES

Ilczyszyn et al. v. Southwest Airlines Co., No. RG15766954
(Calif. Super. Ct., Alameda Cnty.)

Ilczyszyn et al. v. Southwest Airlines Co., No. A158352
(Cal. Ct. App. 1st Appellate Dist., Div. One)

Ilczyszyn et al. v. Southwest Airlines Co., No. S275891 (Cal.)

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit (which includes the State of California):

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicants Kelly Ilczyszyn, Sydney Ilczyszyn, Logan Ilczyszyn, and Hannah Ilczyszyn respectfully request a 59-day extension of time, up to and including March 10, 2023, within which to file a petition for a writ of certiorari to review the judgment of the California Court of Appeal.

The California Court of Appeal entered its judgment on June 8, 2022, and denied a petition for rehearing on June 29, 2022; the California Supreme Court denied a petition for review on October 12, 2022. The California Court of Appeal’s opinion (reported at 80 Cal. App. 5th 577; 295 Cal. Rptr. 3d 533) and its order denying rehearing are attached hereto as Exhibits A and B. The California Supreme Court’s order denying a petition for review is attached hereto as Exhibit C. The petition would be due on January 10, 2023, and this application is made at least 10 days before that date. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1257(a).

1. This case involves an important issue regarding the scope of immunity granted under 49 U.S.C. § 44941(a), part of the Aviation and Transportation Security Act. Section 44941(a) provides, in relevant part, that “[a]ny air carrier . . . or any employee of an air carrier . . . who makes a voluntary disclosure of any

suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism . . . to any . . . Federal, State, or local law enforcement officer, or any airport or airline security officer shall not be civilly liable to any person . . . for such disclosure.”

By its terms, this provision immunizes air carriers and their employees *for disclosures*. See generally *Air Wisconsin Airlines Corp. v. Hoeper*, 571 U.S. 237 (2014). The provision does not provide immunity for negligent actions of air carriers or their employees that are not disclosures to law enforcement or security personnel. Yet in this case, the California Court of Appeal read § 44941(a) to immunize negligent conduct by flight attendants that led to a tragic and avoidable death – simply because the pilot of the plane *also* made a protected disclosure. Such an expansive reading of § 44941(a) is inconsistent with the decisions of other federal courts and risks depriving plaintiffs of compensation for injuries suffered as a result of negligent conduct that has nothing to do with the disclosures that the statute was intended to protect.

2. The tragic facts of this case are set out in the reported opinion of the Court of Appeal. Richard Ilczyszyn was traveling on a Southwest Airlines flight from Oakland to Orange County when he suffered a pulmonary embolism. Op. 1. Hearing sounds of crying, the crew investigated and determined they were coming from the plane lavatory and that an adult had entered the lavatory and had been there for some time. Op. 7-8. The crew attempted to communicate with the person in the lavatory but received no response; they attempted to open the door but were unable to do so and became concerned that the individual was blocking the door on

purpose. Op. 8, 10. The pilots of the plane became aware of the situation and told the flight attendants to leave the passenger; they also alerted ground personnel of a potential security threat. Op. 10. Upon landing, all passengers were disembarked before any effort was made to attend to Mr. Ilczyszyn; by the time he was reached, he had gone into cardiac arrest and later died in the hospital. Op. 10-11.

The jury found that the flight crew was negligent in failing to recognize Mr. Ilczyszyn's medical distress but it ruled for the defendant on the issue of causation. Op. 2. Importantly, the jury had been instructed that it could not hold defendant liable for any actions or omissions that occurred after the crew first communicated with the pilot about Mr. Ilczyszyn's situation. *See* Op. 45 (quoting jury instructions). The trial court gave that instruction because it had determined that § 44941(a) required it, even though the defendant did not offer any evidence – or even contend – that the crew's failure to attend to Mr. Ilczyszyn after the crew first communicated with the pilot was the result of any disclosure to law enforcement. For example, there was no evidence that law enforcement instructed the pilot or the crew not to continue their efforts to determine whether Mr. Ilczyszyn was in medical distress and to provide appropriate emergency care.

In giving such a broad immunizing instruction – over plaintiffs' objection – the trial court ignored substantial federal authority making clear that § 44941(a) applies to *disclosures*, not to actions of airline personnel that are neither disclosures nor the predictable consequences of such disclosures. *See Baez v. JetBlue Airways Corp.*, 793 F.3d 269, 274 (2d Cir. 2015); *Bayaa v. United Airlines, Inc.*, 249 F. Supp. 2d 1198, 1205 (C.D. Cal. 2002); *see also Dasrath v. Continental Airlines, Inc.*, 228 F.

Supp. 2d 531, 538 (D.N.J. 2002) (“[Section 44941] provides shelter not to actions taken on the basis of disclosures but rather to the disclosures themselves.”); *Shqeirat v. U.S. Airways Grp., Inc.*, 515 F. Supp. 2d 984, 1000 (D. Minn. 2007); *Bandary v. Delta Air Lines, Inc.*, 2019 WL 9244788, at *2-3 (C.D. Cal. Oct. 11, 2019). If not corrected, the decision upholding the trial court’s instruction threatens to immunize negligent conduct far beyond the terms that Congress adopted in § 44941.

3. The 59-day extension to file a certiorari petition is necessary because undersigned counsel has limited familiarity with the record and needs the additional time to review the record and to prepare the petition and appendix. Counsel also has previously engaged matters, including: (1) a preliminary injunction hearing in *FTC v. Meta Platforms, Inc.* (N.D. Cal.), which concluded on December 20, 2022; (2) an FTC administrative hearing in a related matter, scheduled to begin on January 19, 2023; and (3) noticed depositions scheduled in the month of January 2023 in *FTC v. Meta Platforms, Inc.* (D.D.C.). Counsel also has long-scheduled holiday travel during the last week of December.

For all these reasons, there is good cause for a 59-day extension of time, up to and including March 10, 2023, within which to file a certiorari petition in this case to review the judgment of the California Court of Appeal.

Respectfully submitted,



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