No. 23-5202

ORIGINAL

In the

Supreme Court of the United States

AARON ABADI,

& URI MARCUS

Petitioners,

v.

TRANSPORTATION SECURITY ADMNISTRATION ("TSA"),

Respondent.

On petition for writ of certiorari to review a judgment on a Petition for Review of TSA Security Directives & Emergency Amendment, denied by **United States Court of Appeals for the DC Circuit.**

PETITION FOR WRIT OF CERTIORARI

Petitioners:

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

Uri Marcus *(Pro Se)*
P.O. Box 126
Ojai, CA 93024
(909) 833-0065 • uri@ntcf.org

QUESTIONS PRESENTED

1) The Transportation Security Administration "TSA" was created by Congress after the terrorist attacks on September 11 to protect the American people from SECURITY THREATS, and not for any health-related matters and/or pandemics. Congress chose not to enact a nationwide mask mandate for travel, yet the TSA enacted one. Did TSA have the authority to mandate nationwide restrictions and mandates with regards to health-related issues, that significantly affect almost every American?

2) Congress enacted the Air Carrier Access Act "ACAA" to protect the disabled while traveling by airplane. Can the TSA put the ACAA in abeyance and authorize and instruct airlines to implement policies that are in contrast to the ACAA regulations? Do they have this kind of power?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Aaron Abadi, and Uri Marcus. Name, address, and contact information is listed above, as Petitioners.

Respondent is the TRANSPORTATION SECURITY ADMNISTRATION, an agency within the Department of Homeland Security, represented by the following attorneys at the Department of Justice:

ELIZABETH B. PRELOGAR
Solicitor General — SupremeCtBriefs@usdoj.gov
DANIEL TENNY — Daniel.Tenny@usdoj.gov
STEVEN H. HAZEL — Steven.H.Hazel@usdoj.gov
JENNIFER L. UTRECHT — Jennifer.L.Utrecht@usdoj.gov
Civil Division, Appellate Staff
(202) 514-2498
U.S. Department of Justice
950 Pennsylvania Ave., N.W., Rm. 721
Washington, DC 20530

CORPORATE DISCLOSURE STATEMENT

None of the parties are a private corporation. TSA is part of the executive branch of the federal government. Because no party is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This application was brought due to two separate petitions for review of an agency action in the Second Circuit Court of Appeals, and the Fifth Circuit Court of

Appeals. These two cases were then consolidated with four other similar cases and transferred to the DC Circuit Court of Appeals. The six Petitions for Review all originated in other Courts of Appeals and were transferred to the D.C. Circuit at the request of the TSA, and those cases are as follows: Wall v. TSA, No. 21-13619 (11th Cir.); Faris v. TSA, No. 21-3951 (6th Cir.); Marcus v. TSA, No. 21-60808 (5th Cir.); Eades v. TSA, No. 21-3362 (8th Cir.); Andreadakis v. TSA, No. 21-2173 (4th Cir.); and Abadi v. TSA, No. 21-2692 (2nd Cir.). The DC Circuit Court ordered on March 3rd, 2022 that the six petitions be consolidated into the lead case Wall v. TSA.

Also related is Corbett v. Transportation Sec. Admin., 19 F.4th 478 (D.C. Cir. 2021), cert. denied, 214 L. Ed. 2d 194, 143 S. Ct. 395 (2022), which challenged the same Health Directives and Emergency Amendment, but is distinguishable from this case because Petitioner Jonathan Corbett raised only one argument unrelated to disability discrimination. Corbett is not disabled like 12 of the 13 petitioners in the consolidated lawsuits mentioned above.

There are no other cases directly related to this case that Petitioners are aware of.

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PETITION FOR WRIT OF CERTIORARI

Aaron Abadi and Uri Marcus, Petitioners, come pro se, and respectfully petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for District of Columbia Circuit in the case listed herein.

OPINIONS BELOW

On February 9, 2023, the DC Circuit denied all these petitions in an unreported decision, available at Wall v. Transportation Sec. Admin., No. 21-1220, 2023 WL 1830810 (D.C. Cir. Feb. 9, 2023), and attached hereto (Appendix Page 1a). This was followed by a denial of a Motion for Rehearing En Banc on April 11, 2023, located at Wall v. Transportation Sec. Admin., No. 21-1220, 2023 WL 2898977 (D.C. Cir. Apr. 11, 2023), and attached hereto (Appendix Page 5a). The Circuit Court also relied on a partially similar case, Corbett v. Transportation Sec. Admin., 19 F.4th 478 (D.C. Cir. 2021), cert. denied, 214 L. Ed. 2d 194, 143 S. Ct. 395 (2022), which was reproduced here (Appendix Page 6a).

JURISDICTION

The Circuit Court has jurisdiction to review the four TSA orders:

> "a person disclosing a substantial interest in an order issued by the ... Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration ... in whole or in part under this part, part B, or subsection (l) or (s)

> of section 114 may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued." 49 USC § 46110(a).

We have standing to contest the four TSA mask orders because we have "a substantial interest" due to our disabilities which made it impossible for us to safely cover our faces. TSA's mask orders excluded hundreds of thousands of Americans with medical conditions who could not safely wear face coverings when using any mode of the nation's public-transportation system, in violation of the Air Carrier Access Act; Rehabilitation Act; Food, Drug, & Cosmetic Act; and other federal and state laws and international treaties. They also violated our constitutional rights to travel and the 10th Amendment.

We also have standing, because we have injuries caused directly by the ban on our travel, which was unlawful, and are currently suing for damages.

The Circuit Court has the authority "to affirm, amend, modify, or set aside any part of the order and may order the ... Transportation Security Administration ... to conduct further proceedings. After reasonable notice to the ... Administrator of the Transportation Security Administration ... the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists." 49 USC § 46110(c).

This Court has jurisdiction under 28 U.S.C. §1254, which states the following: "Cases in the courts of appeals may be reviewed by the Supreme Court by the

following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree..."

This Petition is timely, because the Order to Deny Petitions to Review in the DC Circuit Court of Appeals was on February 9, 2023, followed by a denial of a rehearing en banc on April 11, 2023 (Appendix page 5a). The 90-days from this date ends on July 10, 2023. Petition was postmarked before that date.

PROVISIONS, STATUTES, & REGULATIONS

(Full text in Appendix)

INTRODUCTION

Petitioners hereby petition 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 dispatched 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 Supreme Court of the United States of America made a decision just the other day [on June 30, 2023] striking down Biden's student-loan-forgiveness program

and emphasized the Major Questions Doctrine, that executive agencies can't issue regulations without clear, unambiguous congressional intent. Executive overreach is identical in this case before the Court. That case is Biden v. Nebraska, No. 22-506, 2023 WL 4277210, at *12 (U.S. June 30, 2023). That case follows two other Covid-related cases with similar stories. In those cases, the issue was similar; where this Court had to stop the overreach of the current President's Administration. See National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration (2022) 211 L.Ed.2d 448 [142 S.Ct. 661, 666] and Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 210 L. Ed. 2d 856, 141 S. Ct. 2485, 2490 (2021).

This is a simple and relatively clear-cut case where the TSA is going way beyond its purview to issue a nationwide mandate, for an issue that isn't even in its mission, and/or authorization. Additionally, Petitioners and those similarly disabled have been discriminated against due to their disabilities that cause them to be medically incapable of safely donning a mask. All airlines have denied them access to fly without a mask for the span of about two years, and/or added requirements that were in violation of disability laws.

The questions presented are simple and straightforward.

Did TSA have the authority to mandate nationwide restrictions and mandates with regards to health-related issues, that significantly affect almost every American?

Can the TSA put the ACAA in abeyance and authorize and instruct airlines to implement policies that are in contrast to the ACAA regulations? Do they have this kind of power? (ACAA disability laws attached Appendix Page 76a)

The Supreme Court has the final say when it comes to the interpretation of the Constitution and the laws of the land. It is imperative that this Court weighs in on these issues once and for all, and sets the record straight. This is a simple issue that does not require thirty pages of discussions. The Court can decide this and provide its response on a page or two. It's either a yes or a no on both issues, and possibly a source or two.

This issue is not moot as the CDC and the TSA made very clear in their public announcements that they plan to reinstate these mandates. Dr. Anthony Fauci, formerly of the NIH, publicly declared that we should expect another pandemic very soon, "possibly even next year." It has been on every news station in the past weeks and months. If this Court can give us guidance as to these issues, hundreds of thousands of people will be affected, one way or another.

This DC Circuit Court's decision agrees with the TSA, that this case is NOT MOOT, but dismissed it on the merits. We ask this Court to review the lower court's decision and reverse its dismissal.

STATEMENT OF THE CASE

1. The TSA was created by Congress after the terrorist attacks on September 11 to protect the American people from SECURITY THREATS.

2. Their website (Appendix page 73a) describes their mission, vision and history as follows:

MISSION

3. Protect the nation's transportation systems to ensure freedom of movement for people and commerce.

VISION

4. An agile security agency, embodied by a professional workforce, that engages its partners and the American people to outmatch a dynamic threat.

HISTORY

5. On the morning of September 11, 2001, nearly 3,000 people were killed in a series of coordinated terrorist attacks in New York, Pennsylvania and Virginia. The attacks resulted in the creation of the Transportation Security Administration, designed to prevent similar attacks in the future. Driven by a desire to help our nation, tens of thousands of people joined TSA and committed themselves to strengthening our transportation systems while ensuring the freedom of movement for people and commerce.

6. The Aviation and Transportation Security Act 49 U.S. Code § 114 (Appendix Page 16a), that was passed by the 107th Congress and signed on November 19, 2001, established the TSA.

7. See 49 U.S. Code § 44903 - Air transportation security, where the statute describes the security responsibilities of the TSA.

8. Nowhere in the Aviation and Transportation Security Act, in 49 U.S. Code § 44903, in TSA's mission statement, or in any other controlling document does it authorize TSA or even suggest that the TSA should be mandating health related requirements on all travel in the entire United States.

9. The TSA, in their Brief, were relying on some ambiguous words that they claim gave them full authority over any issues related to transportation in a state of emergency.

10. Congress at times can be ambiguous. If Congress was more careful about what they write, and how they write it, being a Justice on the Supreme Court might look more like retirement.

11. In any case, this ambiguity cannot be justified to include powers that have no relation whatsoever to their normal purpose and process. The TSA's main line of duty is to put security screeners for the people and their luggage, and try to make sure we don't have another terrorist attack.

12. They would not be handling pilot licenses, airline-caterer food choices, flight scheduling, rebates for delayed flights, or any of a million other aspects of transportation, which have no relation to safety/security. They should also not be handling or dictating mandates with regards to wearing masks. This is not their field and they know nothing about it. This was evident by the data afterwards showing

that masks on airplanes had no benefits at all, and which was confirmed by the airlines themselves.

13. Yet, the COVID-19 Pandemic happened, and the TSA issued Directives to require all travelers to wear masks or they would not be allowed to travel.

14. They even went as far as to say that people with disabilities who cannot wear a mask, such as these Petitioners, cannot fly without a mask and/or without various demands and requirements that non-disabled people were not required to do. This is in violation and contrary to the federal and state disability laws.

15. Both Petitioners herein have been diagnosed with disabilities, and could not safely don a mask. These are permanent conditions that they had during their entire lives and will continue to have for the remainder of their lives. During COVID, they carried around doctor's letters clarifying that they could not safely don a mask.

16. In the TSA Directives, they authorized air carriers and airport operators to violate disability laws and create illegal requirements in order to allow those with disabilities to travel, contrary to Congressional intent with the enactment of ACAA.

17. The TSA does not have the authority to authorize and require airlines to violate disability laws, and they do not have the authority to place disability laws into abeyance.

18. This is just another scenario similar to National Federation of Independent Business v. Department of Labor, OSHA, where the Executive Branch of our government was again trying to bypass Congress and modify and create their own laws.

19. As in that case, the Supreme Court said, "Indeed, although Congress has enacted significant legislation addressing the COVID–19 pandemic, it has declined to enact any measure similar to what OSHA has promulgated here." National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration (2022) 211 L.Ed.2d 448 [142 S.Ct. 661, 666].

20. The same was determined in the case against the CDC moratorium on evictions. See Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 210 L. Ed. 2d 856, 141 S. Ct. 2485, 2490 (2021).

21. The same issues and arguments apply here. Congress had ample opportunity to initiate mask mandates for travel, and chose not to. The Executive Branch should refrain from creating legislation, and focus on enforcing existing legislation, such as the disability laws already enacted by Congress.

22. 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.

23. 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.

24. Under the president's order, the Department of Homeland Security issued Determination 21-130 on Jan. 27, 2021, directing TSA to enforce a

requirement that all passengers using any form of public transportation nationwide don face coverings.

25. CDC, with no statutory or regulatory authority and without giving notice and seeking public comments, issued an order "Requirement for Persons to Wear Masks While on Conveyances & at Transportation Hubs," effective Feb. 1, 2021. 86 Fed. Reg. 8,025 (Feb. 3, 2021).

26. TSA, also lacking statutory or regulatory authority and without giving notice or soliciting comments, produced Health Directives 1542-21-01, 1544-21-02, and 1582/84-21-01 as well as Emergency Amendment 1546-21-01 dated Jan. 31, 2021, to enforce CDC's *ultra vires* mask mandate (collectively referred to herein as "the TSA mask mandates"). These four orders went into effect Feb. 1, 2021. (Appendix pages 50a,55a,61a, and 67a respectively)

27. The original four TSA mask mandates expired May 11, 2021. Again, without any statutory or regulatory authority, notice, or public comment, TSA issued orders April 29, 2021, extending the TSA mask mandates enforcement until Sept. 13, 2021, by attaching the letter "A" to the original directives.

28. When these orders were about to expire Sept. 13, TSA (again without any statutory or regulatory authority, and without giving notice or asking for comments) issued another batch of orders Aug. 20, 2021, extending its TSA mask mandates enforcement until Jan. 18, 2022, by substituting the letter "B" for the letter "A." The three Health Directives and one Emergency Amendment were renewed

again until March 18, 2022, by substituting the letter "C" and then again until April 18, 2022, by substituting the letter "D."

29. The four challenged orders require, inter alia, that aircraft, transit bus, intercity bus, intercity rail, commuter rail, subway and other heavy rail, light rail, tram, streetcar, rideshare car, ferry, and other commercial conveyance and transportation hub operators: 1) mandate all passengers wear masks at all times unless outdoors; and 2) report noncompliance by passengers to TSA. The administration claims authority to levy fines starting at $500 for passengers who don't muzzle themselves.

30. The TSA is not currently enforcing the TSA mask mandates, because the Honorable Kathryn Kimball Mizelle, Federal Judge in Florida, ended the mask mandate for transportation, by determining that it was arbitrary and capricious, and the CDC exceeded its authority, amongst other issues. The case was Health Freedom Defense Fund, Inc. v. Biden (M.D. Fla. 2022). This happened on April 18, 2022. Most airlines ended the mask rules within several days.

31. The issue, however, is not moot. While the active enforcement is currently stopped, the federal government was actively pursuing continuing it by appealing that ruling in the Circuit Court of Appeals.

32. The DC Court of Appeals agrees, as in its Order of February 9, 2023, the Court writes, "<u>These cases, though, fall squarely within the voluntary cessation exception to mootness</u>."

33. In National Federation of Independent Business v. Department of Labor, O.S.H.A., the U.S. Supreme Court addressed a federal vaccine requirement that was similar in that the President and the Executive Branch were creating laws on their own and trying to bypass the Legislative Branch. The court said the following: "It is not our role to weigh such tradeoffs. In our system of government, that is the responsibility of those chosen by the people through democratic processes. Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly. Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category." National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration (2022) 211 L.Ed.2d 448 [142 S.Ct. 661, 666]

34. Petitioner Aaron Abadi, participated in that case, as an Applicant before the Supreme Court, as his case *Aaron Abadi v. Dept of Labor*, OSHA, Application (21A293) US Supreme Ct. 2022, was consolidated with that same case. Abadi was on the conference call for the oral arguments, and it was very clear from the discussions that the Executive Branch should not and cannot bypass the Legislative Branch and the democratic process.

35. Additionally, as described above, the CDC and TSA mask mandates encourage and permit airlines to disobey federal ACAA, and state disability laws, and

to discriminate against the disabled. Neither agency has the authority to modify or amend any of these laws.

WHY THE COURT SHOULD GRANT THIS WRIT

36. Rule 10 of the Supreme Court's rules states that, "Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons."

37. It then lists several reasons why and when the Supreme Court might choose to grant a petition for a writ of certiorari.

38. The following are the reasons that this petition should be granted, and why these issues are significant enough and appropriate for this Court to address.

GOVERNMENT OVERREACH & THE MAJOR QUESTIONS DOCTRINE

39. Rule 10 describes the following as an appropriate reason for this Court to intervene. "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.

40. Both aspects of this description apply here. This is an important federal question, and the DC Circuit ruling conflicts with previous rulings of this Court.

41. Our government was set up by the founding fathers with three branches, the Executive Branch, the Legislative Branch, and the Judicial Branch.

42. We have not had such a pandemic in over 100 years. Suddenly, we are hit by a pandemic, and the people and the government are looking for guidance and instruction on how to properly proceed.

43. As always, dealing with something new and different, can create situations where things are not handled properly. It is the responsibility of this Court to keep the other branches from coloring outside the lines.

44. An appropriate response would have been for the elected members in the Legislative Branches, either from the federal government, or from the states, to vote on measures to address the spread of the pandemic.

45. The biggest issues on the table were mandating vaccines, and mandating mask wearing.

46. The Legislative Branches all chose not to instate mask mandates, as they clearly would not have had the votes. In a democratic process, these are your checks and balances.

47. Instead of accepting that and moving on, this Executive Branch tried bypassing the normal legislative process, by legislating through their various administrative agencies.

48. You can see that same way of thinking from the most recent case decided by this Court, dismissing affirmative action. Instead of accepting the wisdom and authority of this Court, the Executive Branch responded very differently.

49. The President tweeted out the following:

"In the wake of today's Supreme Court decision on student loan relief, we need a new way forward. And we're moving as fast as we can.
Here's what's next: (4:12 PM · Jun 30, 2023)
First, I'm announcing a new path to provide student debt relief to as many borrowers as possible, as quickly as possible, grounded in the Higher Education Act.
@SecCardona took the first official step to initiate this new approach.
We aren't wasting any time.
Second, we're creating a temporary 12-month "on ramp" to repayment.
This is not the same as the student loan pause, but during this period – if you miss payments – this "on ramp" will temporarily remove the threat of default or having your credit harmed.
This fight isn't over."

50. Vice President Harris tweeted the following:

"Yesterday, the Supreme Court blocked our student debt relief plan.
Our Administration is moving quickly to create an alternative path to provide relief through the Higher Education Act. @POTUS and I will continue to fight to deliver the relief student borrowers need."

51. There was no mention of an attempt to speak to or negotiate with the Legislative Branch, and try to get a law passed. It is all about unilateral actions and control. If they cannot get it done this way, they'll try another way. That is what happened with vaccine mandates and with mask mandates. I don't have the transcripts of the oral arguments at the case against OSHA available to me, but I remember the Chief Justice's frustrations about this exact point.

52. This Court stopped the Occupational Safety and Health Administration ("OSHA") from overstepping its Congressionally authorized powers, by trying to force

a vaccine mandate, in Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.

53. Again, with regards to an eviction moratorium, the federal government attempted a serious overreach through the CDC. This Court stopped that too and said the following:

> "It is indisputable that the public has a strong interest in combating the spread of the COVID–19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends. Cf. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 585–586, 72 S.Ct. 863, 96 L.Ed. 1153 (1952) (concluding that even the Government's belief that its action "was necessary to avert a national catastrophe" could not overcome a lack of congressional authorization). It is up to Congress, not the CDC, to decide whether the public interest merits further action here." Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 210 L. Ed. 2d 856, 141 S. Ct. 2485, 2490 (2021)

54. Then just a few days ago, this Court again had to deal with the Major Questions Doctrine, and the overreach by this executive administration. This Court again stood up to the government overreach and stopped the executive branch from exercising power and control delegated to Congress. The Court said the following:

> "The question here is not whether something should be done; it is who has the authority to do it. Our recent decision in West Virginia v. EPA involved similar concerns over the exercise of administrative power. 597 U. S. ——, 142 S.Ct. 2587, 213 L.Ed.2d 896 (2022). That case involved the EPA's claim that the Clean Air Act authorized it to impose a nationwide cap on carbon dioxide emissions. Given "the 'history and the breadth of the authority that [the agency] ha[d] asserted,' and the 'economic and political significance' of that assertion," we found that there was " 'reason to hesitate before concluding that Congress' meant to confer such authority." Id., at ——, 142 S.Ct. at 2608 (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159–160, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000); first alteration in original)." Biden v. Nebraska, No. 22-506, 2023 WL 4277210, at *12 (U.S. June 30, 2023)

55. Here is the very same issue. Congress would not and most likely could not get together enough votes to create a mask mandate for transportation across the entire country; affecting 300+ million people in the United States alone. President Biden and his team promised vaccine mandates and mask mandates, during his campaign; power he did not possess. This issue clearly was political and not safety, fact, and/or science based.

56. Instead of trying to get the Legislative Branch to act, the President and his administration decided to bypass all that. This Court stopped them with that case against OSHA, with the case against the CDC rent moratorium, and again now with the student-loan forgiveness program.

57. When it came to mask mandates on the entire transportation system, the President's administration asked the TSA to create a mask mandate, outside of their established mandate. Health was never the TSA's responsibility, nor do they have any experience in that field.

58. Besides, Congress never would have authorized them to create legislation that would so broadly and directly affect hundreds of millions of Americans, without any connection to the safety of transportation.

59. Even if Congress would have considered that, it would be a violation of the non-delegation doctrine. "The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government." Gundy v. United States, 204 L. Ed. 2d 522, 139 S. Ct. 2116, 2121 (2019)

60. The reading of the broad emergency powers in 49 USC 114 has no relation to health. TSA was created to avoid another September 11 terrorism-related catastrophe. It was not created for pandemics, and there's no indication that Congress would give such broad powers.

61. In 49 U.S. Code § 44903 - Air transportation security (Appendix Page 36a), it describes the security responsibilities and measures required by the TSA. It does not talk about health, pandemics, or viruses. It does not mention or suggest anything that would justify this agency to be authorized to mandate masks for Covid.

62. In Corbett, the DC Circuit noted the following, "Chevron directs courts to accept agency's reasonable resolution of ambiguity in statute that agency administers. Corbett v. Transportation Sec. Admin., 19 F.4th 478 (D.C. Cir. 2021), cert. denied, 214 L. Ed. 2d 194, 143 S. Ct. 395 (2022).

63. Our ruling from the DC Circuit in our case was based on that statement, and on that case. The Court referred to it as "precedent." If there ever was a bad precedent, this would be it.

64. Even if Congress were to give such broad powers, they would not be permitted to do that. This would not be a Chevron deference situation.

65. As Justice Gorsuch explains in his concurrence to the case against OSHA, "Indeed, for decades courts have cited the nondelegation doctrine as a reason to apply the major questions doctrine. *E.g.*, *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U.S. 607, 645, 100 S.Ct. 2844, 65 L.Ed.2d 1010 (1980) (plurality opinion). Both are designed to protect the separation of powers and

ensure that any new laws governing the lives of Americans are subject to the robust democratic processes the Constitution demands." Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin., 211 L. Ed. 2d 448, 142 S. Ct. 661, 668–69 (2022)

66. Chief Justice John Roberts summarized the major questions doctrine in the landmark case of West Virginia v. Environmental Protection Agency (2022) as follows: "Thus, in certain extraordinary cases, both separation of powers principles and a practical understanding of legislative intent make us "reluctant to read into ambiguous statutory text" the delegation claimed to be lurking there. *Utility Air*, 573 U.S. at 324, 134 S.Ct. 2427. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to "clear congressional authorization" for the power it claims." W. Virginia v. Env't Prot. Agency, 213 L. Ed. 2d 896, 142 S. Ct. 2587, 2609 (2022).

67. Whether or not our reasoning prevails, this question, this issue, and this case certainly warrants a review by the Supreme Court, to once and for all clarify these points.

68. If the Court refuses to intervene, it is likely that in the next national emergency, the Executive Branch will assert three times the amount of control that they tried during Covid.

69. As Justice Gorsuch so eloquently noted in his concurrence in the case against the OSHA vaccine mandates, "The question before us is not how to respond to the pandemic, but who holds the power to do so. The answer is clear: Under the

law as it stands today, that power rests with the States and Congress, not OSHA. In saying this much, we do not impugn the intentions behind the agency's mandate. Instead, we only discharge our duty to enforce the law's demands when it comes to the question who may govern the lives of 84 million Americans. Respecting those demands may be trying in times of stress. But if this Court were to abide them only in more tranquil conditions, declarations of emergencies would never end and the liberties our Constitution's separation of powers seeks to preserve would amount to little." Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin., 211 L. Ed. 2d 448, 142 S. Ct. 661, 670 (2022).

DISABILITY DISCRIMINATION

70. The disability discrimination component here is also a major issue. This Court should certainly set that issue straight.

71. The DC Circuit in its ruling barely addressed this issue, just to say, "The TSA's directives required airlines to exempt those with disabilities "who cannot wear a mask, or cannot safely wear a mask, because of the disability[.]" Security Directive No. 1542-21-01D, at 3–4. In addition, the directives did not dictate how private airlines should administer their own exemption processes. *See* Security Directives Nos. 1542-21-01D, 1582/84-21-01D."

72. This is not accurate. In the TSA directives, in the footnotes, they write the following:

> "Airport operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the

> requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the airport operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19.... Airport operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Airport operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.
>
> This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devises / technology. It is not meant to cover persons for whom mask-wearing may only be difficult. CDC intends to issue further guidance regarding this exception."

73. These instructions were used by all airlines to say that the TSA authorized them to create all types of conditions in order to receive an exemption. The Dept of Transportation ("DOT") used this as justification to allow airlines to create their own exemption criteria, even though it would technically violate the ACAA disability laws.

74. To a bare minimum, the lower court should have reviewed the TSA's instructions to the airlines, authorizing them to violate the Air Carrier Access Act ("ACAA"), and to demand that they correct that.

75. The Petitioners suffered significantly from our inability to fly due to our disabilities that cause us not to be able to safely wear a mask.

76. Airlines quoted the TSA Directives to us, showing us that they are authorized to either ban us completely, and/or require us to go through multiple processes and provide various documents that non-disabled people were not required to do. In most cases, these requirements and restrictions were created in order to not allow us to travel.

77. There were very few times that any of us were actually able to fly during that period.

78. Our incomes were tied to our ability to travel. The discriminations that we experienced, that were sanctioned by the TSA, directly caused every one of us severe injuries.

79. The DC Circuit said that we should approach the Dept. of Transportation for those disability related issues. We did just that, and were again referred to the TSA Directives by USDOT; all-the-while USDOT failed to act and continues to ignore our formal claims. It has been over 2 years on most of the claims without any action by USDOT.

80. It is imperative that this Court addresses this question, and these issues. These are extremely important, and if not addressed, it can be much worse on the next emergency.

CONFLICT BETWEEN CIRCUIT COURT DECISIONS

81. One of the more common situations that this Court chooses to review a case, is when there is conflict between Circuit Court decisions, between the various Circuits, between the same Circuit, and between the Circuit Court and the Supreme Court's own opinions.

82. Here we have much of that.

83. The Supreme Court says that OSHA is in the workplace safety business, and should not be dictating vaccine mandates. Here should be the same. TSA is in safety and security business, not virus contagions. Clearly, they should have stayed away, as at this point the airlines confirmed and most people realize that the masks on the planes were not necessary, and accomplished little, if anything at all. The DC Circuit decision on our petitions, conflicts with this Court.

84. Both the DC Circuit (In re Abadi, No. 22-1012, 2022 WL 2541249 (D.C. Cir. Apr. 14, 2022), cert. denied sub nom. Abadi v. Dep't of Transportation, 214 L. Ed. 2d 88, 143 S. Ct. 220 (2022)), and the Second Circuit (Abadi v. Dep't of Transportation, No. 21-2807, 2021 WL 7500325 (2d Cir. Dec. 29, 2021), cert. denied, 212 L. Ed. 2d 592, 142 S. Ct. 1694 (2022) denied petitions for review of the DOT, and refused to require them to enforce the ACAA.

85. Yet, at the same time, those same Circuit Courts rule consistently that ACAA was not set up for private action.

86. If there is no Congressionally designated enforcement process, there should be an implied right to private action. If there is no right to private action, then the DOT is required to "enforce" the ACAA. If they're required by Congress to enforce the ACAA, then Plaintiffs should have a right to have the Circuit Courts review the DOT on their enforcement actions and inactions.

87. Instead, these Circuit Courts ruled on conflicting decisions against their own decisions. There is confusion all around.

88. This Court should review these issues and those related to them, and set the records straight. We should not have to have another pandemic in order to find out what the law is. Besides, what if the next pandemic also takes us by surprise and this Court never has a chance to clarify.

89. This is the Supreme Court's time and opportunity to step up to the plate and show the people of the United States of America that you are here for us and that you will set things straight. This Court needs to show us that chaos and power-grabbing will not be the new normal.

CONCLUSION

WHEREFORE, Petitioners request that this Court grant this writ of certiorari, and allow the Parties to submit the necessary briefs to facilitate this Court to be able to respond and resolve the questions and issues herein.

Respectfully submitted on July 20, 2023,

AARON ABADI, *Petitioner (Pro se)*
82 Nassau Street, Apt 140
New York, NY 10038
Tel: (516) 639-4100
Email: aabadi@optonline.net

URI MARCUS, *Petitioner (Pro se)*
P.O. Box 126
Ojai, CA 93024
Tel: (909) 833-0065
Email: uri@ntcf.org