

No. 25-

IN THE
Supreme Court of the United States

YUBO MIAO,

Petitioner,

v.

UNITED AIRLINES, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court may dismiss a complaint alleging racial discrimination under 42 U.S.C. § 1981 at the pleading stage by resolving factual disputes against the plaintiff and drawing inferences in favor of the defendant when the complaint, read as a whole, alleges a coherent claim of discrimination supported by specific, non-conclusory facts?

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant in the court of appeals) is Yubo Miao.

Respondent (defendant-appellee in the court of appeals) is United Airlines, Inc. (“United”). The parent company of United is United Airlines Holdings, Inc., which trades under the ticker symbol UAL on the NASDAQ exchange.

RELATED PROCEEDINGS

- *Yubo Miao v. United Airlines, Inc.*, No. 24-cv-01345, U. S. District Court for the Northern District of Illinois. Judgment entered on March 18, 2025.
- *Yubo Miao v. United Airlines, Inc.*, No. 25-1649, U. S. Court of Appeals for the Seventh Circuit. Judgment entered January 13, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Yubo Miao respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-15a) is reported at 164 F.4th 622. Judge Ripple filed a dissenting opinion (App., *infra*, 8a-15a). The district court's order granting United's motion to dismiss (App., *infra*, 16a-27a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 13, 2026 (App., *infra*, 1a-15a). This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1981 states:

- (a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

- (b) “Make and enforce contracts” defined. For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
- (c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

STATEMENT

Yubo Miao, an American of Chinese descent, was removed from a United Airlines flight after a flight attendant falsely accused him of hitting her—while a white passenger with similar luggage was left untouched. The question is whether a court may dismiss his racial discrimination claim before any discovery by resolving factual disputes against him and drawing inferences in favor of the airline. This Court’s intervention is needed to restore the proper boundaries of courts in reviewing and deciding cases at the pleading stage. This Court’s review, and reversal, is necessary to reaffirm that justice requires a fair opportunity to discover and present evidence.

Here, Yubo Miao (“Miao”) alleged specific, non-conclusory facts demonstrating discrimination by United Airlines, Inc. (“United”). The district court dismissed the case in its entirety, before discovery, and without permitting Miao the opportunity to obtain documents, examine witnesses, or otherwise substantiate his allegations. The district court’s dismissal order was affirmed by a majority of the panel of the court of appeals

(Judge Ripple dissented). In dismissing the case at the pleading stage, the lower courts departed from this Court's precedent requiring that well-pleaded factual allegations be accepted as true and that all reasonable inferences be drawn in a plaintiff's favor. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-557 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2008).

While *Twombly* refined the plausibility standard, it does not authorize courts to resolve factual disputes at the pleading stage. Left unreviewed, the court of appeal's judgment has the potential to transform motions to dismiss into a merit-based adjudication, insulating powerful defendants, like United, from accountability and depriving plaintiffs, like Miao, of their day in court. Such a result creates a system in which claims are dismissed not because they lack merit, but because plaintiffs are denied the opportunity to prove them. This, in turn, erodes confidence in the judicial process.

By denying Miao any opportunity to develop his case and present evidence, the court of appeals nullified the distinction between pleading and proof. This not only undermines Federal Rule of Civil Procedure 8, but also fundamental principles of procedural fairness. Without this Court's intervention, the pleading stage will be an insurmountable barrier not only to Miao, but to all plaintiffs going forward.

A. Background

On June 1, 2023, Miao was scheduled to fly on United Flight 2683, which was traveling from Chicago, Illinois, to San Diego, California. Miao is an American citizen of

Chinese descent. As Miao entered the airplane and went to his seat, he noticed a Caucasian flight attendant staring at him (App., *infra*, 2a).

Upon arriving at his seat, Miao placed his two (2) carry-on bags and a lunch bag in the overhead bin and sat down. After Miao sat down, the flight attendant (who had been staring at him) approached Miao and demanded that he move his lunch bag from the overhead storage to under his seat. Miao immediately removed his lunch bag from the overhead bin as instructed. Because the bag contained food, he temporarily placed it on the empty seat next to him. He intended to move it under the seat when the other passenger arrived, so it would not be stepped on. During this time, Miao noticed that another passenger, who was Caucasian, was allowed to put two larger carry-on bags in the overhead bin along with a bag that was similar in size to Miao's lunch bag (App., *infra*, 2a-3a).

A short time later, the flight attendant again asked that Miao place the lunch bag under his seat. Miao tried to explain that because the lunch bag contained food, he intended to place it under the seat when the other passenger arrived. Despite this reasonable request, the flight attendant raised her voice, yelled at Miao, and threatened to involve the captain. Miao immediately complied, placing the lunch bag under his seat. Afterwards, another passenger who witnessed the flight attendant's extreme reaction, told Miao that he thought that the flight attendant had been very disrespectful (App., *infra*, 2a). The white passenger with similar bags was never confronted, asked to move anything, or removed. No other non-Asian passenger was subjected to any hostile treatment or removal.

Shortly after being yelled at by the flight attendant, a United supervisor approached Miao and said that the flight attendant had claimed that Miao had hit her and that the captain wanted Miao removed (App., *infra*, 2a). The flight attendant’s allegation was a lie. At no point did Miao make any physical contact with the flight attendant. While Miao denied having made any physical contact with the flight attendant, he complied with the directive to exit the plane (App., *infra*, 2a-3a). The other passenger with similar bags was not confronted in a similarly hostile manner by the United flight attendants. No other non-Asian passenger was removed from the plane.

After his removal from the flight, Miao submitted a complaint to United about the racial discrimination he experienced. United’s Passenger Incident Review Committee (“PIRC”) responded by initially banning Miao from flying on United until a further decision was made. The PIRC later rescinded its ban on Miao and stated he was “welcome to travel on United Airlines” (App., *infra*, 3a).

B. Procedural History

On February 16, 2024, Miao filed his complaint alleging that United discriminated against him in violation of 42 U.S.C. § 1981. On March 18, 2025, the district court granted United’s motion to dismiss and entered judgment in favor of United (App., *infra*, 16a-27a). Adopting United’s arguments, the district court concluded that Miao had engaged in “misconduct” by temporarily placing his lunch bag on the empty seat next to him—an act the district court characterized as disobedience (App., *infra*, 26a). According to the district court, the only reasonable inference, based on Miao’s own conduct, was that he was not a victim of discrimination (App., *infra*, 26a).

On January 13, 2026, the court of appeals issued its judgment affirming the district court’s judgment in favor of United. As an initial matter, the court of appeals found that it had jurisdiction to hear the appeal despite the district court dismissing the case without prejudice. The court of appeals determined that it had jurisdiction to hear the appeal because the case had been terminated and “there’s reason to believe the district judge was finished” (App., *infra*, 4a). The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

The court of appeals stated that Miao argues that he was discriminated against because (1) the flight attendant stared him down as he entered the aircraft, (2) other non-Asian passengers were allowed to place carry-on bags like Miao’s in the overhead bins without being asked to move them, (3) the flight attendant overreacted to Miao placing his lunch bag on an empty seat, (4) the flight attendant concocted a story about Miao hitting her as pretext for his removal, and (5) Miao was later scrutinized when he attempted to board a different United flight. The court of appeals determined that none of these facts, if true, tend to show that Miao was singled out because of his race (App., *infra*, 5a). In affirming the district court, the court of appeals made an inference against Miao that he had disobeyed the flight attendant’s instruction and that was the reason he was removed from the aircraft (App., *infra*, 6a). The court of appeals concluded that “while the complaint provides a detailed account of what happened aboard United’s aircraft, we can only speculate that race had anything to do with it” (App., *infra*, 7a).

Judge Ripple issued a dissenting opinion. Judge Ripple recognized that the complaint set forth a comprehensive

description of Miao's encounter with United personnel; however, took issue with the majority in employing an analysis normally associated with motions for summary judgment when it wrote that "Miao's factual allegations do not hold up to scrutiny" (App., *infra*, 9a). According to Judge Ripple the majority's holding is no different from saying that no rational jury could find that United acted as it did only because of Miao's race. *Id.*

Judge Ripple stated that the majority assumed that the temporary placement of Miao's lunch bag was at least a partial reason for United's drastic action, and the justification for his removal rests, at least in part, on a non-discriminatory reason. Judge Ripple believed this to be based purely on "surmise" and requires an assumption that the captain of an airliner would consider such drastic action appropriate (App., *infra*, 13a). According to Judge Ripple, Miao's statement that he temporarily placed his lunch bag on the seat next to him is not incompatible with his assertion that he did not disobey the flight attendant's direction. Judge Ripple reasoned that Miao was entitled to maintain, at least in the pleadings stage, that his action was a good faith effort to comply with the flight attendant's direction and amounted to substantial compliance of the direction as he understood it (App., *infra*, 1a-15a).

Judge Ripple concluded that the majority misapprehends and ignores Miao's account when read in its totality. According to Judge Ripple, Miao's account tells a story of a flight attendant who greeted an Asian with suspicion, treated non-Asian passengers differently, raised her voice unprofessionally when dealing with him over the temporary placement of a lunch bag, and lied about his assaulting her (App., *infra*, 14a). Judge Ripple

believed these allegations more than sufficient to support a plausible inference of racial discrimination against Miao (App., *infra*, 14a).

REASONS FOR GRANTING THE PETITION

The question presented in this case is of critical importance to the civil justice system. The court of appeals wrongfully determined that Miao had not plausibly stated a claim for race discrimination under Section 1981. As a result, Miao was denied any opportunity to pursue his civil rights claims—to conduct discovery, to obtain evidence in United’s exclusive possession, to depose witnesses, and to present his case. His complaint was dismissed before he could take a single deposition or obtain a single document. In dismissing the complaint, the lower courts resolved factual inferences against Miao and applied a level of scrutiny appropriate for summary judgment. The lower courts’ decisions conflict with this Court’s precedent. To remedy the unfairness of Miao being denied the right to prove his claims, and to prevent similar denials in the future, review and reversal by this Court are warranted.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Rule 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 515 (2002). In *Twombly*, this Court clarified that in evaluating whether a plaintiff has stated a claim pursuant to a Federal Rule of Civil Procedure Rule 12(b)(6) motion to dismiss, the courts should only ask whether the complaint’s factual allegations, if taken as true, “state a claim to relief that is

plausible on its face.” *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 678; *Berk v. Choy*, 223 L. Ed. 2d 463, 471 (2026). This pleading standard requires plaintiffs to allege only enough facts to “nudge[] their claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. “By design, this system of pleading makes it relatively easy for plaintiffs to subject defendants to discovery—even for claims likely to fail.” *Berk*, 223 L. Ed. 2d at 471.

In determining the plausibility of a claim, two principles are important. *First*, the court must accept as true all the allegations contained in the complaint. Further, and most importantly as applied to Miao’s case, the court must draw all reasonable inferences in favor of the plaintiff. *Iqbal*, 556 U.S. at 678. *Second*, this Court has relatedly reaffirmed that the plausibility standard is not akin to a “probability requirement.” *Twombly*, 550 U.S. at 556.; *Iqbal*, 556 U.S. at 678. A complaint that satisfies this “plausibility” standard is “well-pleaded” and “may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable.” *Twombly*, 550 U.S. at 556; See also *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (a well-pleaded complaint may proceed even if it appears “that a recovery is very remote and unlikely”).

Section 1981 protects all persons within the jurisdiction of the United States to make and enforce contracts without respect to race. 42 U.S.C. § 1981(a); *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 474-475 (2006). As an initial matter, there is no dispute that the complaint alleges that Miao, as an Asian, is a member of a racial minority or that Miao formed a contract with United when he purchased an airplane ticket. The focus of the lower courts was on Miao’s allegations regarding United’s failure to perform

its part of the contract because it discriminated against Miao on account of his race. According to this Court, Miao must plead that, but for his race, he would not have suffered the loss of a legally protected right to make and enforce a contract. *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 341 (2020). Here, Miao plausibly alleged such a claim.

A. The court of appeal's decision was based on inferences made against Miao

The crux of the court of appeals' decision was its acceptance—without any factual development—of United's argument that Miao violated an airline rule and that this violation justified his removal. In coming to this summary conclusion, the court of appeals wrongfully made an inference against Miao based solely on the argument of United that the decision to remove him was based, at least in part, on Miao having temporarily placed his lunch bag on the vacant seat next to him. The contrary inference—which the court was required to draw in Miao's favor—is that Miao did not ignore or defy instructions. He complied. Miao was entitled to maintain that his actions were intended to comply with the flight attendant instructions, and, in fact, he complied. Placing a lunch bag on an empty seat during boarding is inconsequential. It does not jeopardize safety, impede airline employees, or violate any reasonable interpretation of airline policy. It does not justify Miao being treated in a hostile manner or being removed from the airplane, and calls into question the alleged reason Miao was removed. As best summarized by Judge Ripple, “Mr. Miao’s statement that he temporarily placed his lunch on the seat next to him is not necessarily incompatible with his assertion that he

did not disobey the flight attendant's direction." (App., *infra*, 7a). In resolving a factual issue against Miao, the court of appeal's applied a level of scrutiny appropriate for summary judgment.

The court of appeal's acceptance of United's argument on faith alone denied Miao the ability to conduct discovery and present evidence challenging United's supposed reason for removing him (which, as he alleged, was different than what he was told). Vital information is solely in possession of United (the identity of the passenger who witnessed the incident), and the primary witnesses (the captain and flight attendant) are in the control of United. Discovery would reveal the flight attendant's personnel file, any prior complaints of discrimination, the captain's actual reason for removal, and the identity of the passenger who witnessed the flight attendant's disrespectful conduct. The dismissal of the complaint denied Miao the opportunity to conduct discovery and obtain evidence challenging United's version of events, the alleged reason for his removal, and otherwise showing that he acted reasonably when he temporarily placed his lunch bag on the empty seat.

Any determination of the reasonableness of Miao's actions or the veracity of United's alleged reason for the removal of Miao is an issue that should be decided after completion of discovery and at trial, or at a minimum, in the context of summary judgment after consideration of the parties' evidence. Such a finding is not appropriate at the pleading stage. Thus, this Court should review and reverse the court of appeals' judgment.

B. Miao plausibly states a cause of action for race discrimination.

In affirming the district court’s dismissal of the complaint, the court of appeals reasoned that “As we see it, there is nothing here, aside from conclusory allegations, to plausibly allege discrimination” (App., *infra*, 7a). On the contrary, the complaint presents a detailed and comprehensive account of United’s actions that resulted in the discriminatory denial of Miao’s right to passage. As Judge Ripple stated, “Indeed, the panel majority’s detailed rendition of Mr. Miao’s allegations demonstrates eloquently the clarity of the complaint” (App., *infra*, 7a). Thus, the complaint cannot be summarily dismissed as only containing conclusory allegations.

The court of appeals reviewed each allegation in isolation and concluded that none, standing alone, showed discrimination. But the allegations, considered as a whole, tell a coherent story of discrimination. Judge Ripple recognized this, writing that the complaint, “fairly read, tells the story of a flight attendant who greeted him, an Asian, with suspicion, treated non-Asian passengers differently, raised her voice unprofessionally, and lied about his assaulting her” (App., *infra*, 14a). While the court of appeal appears to have reviewed each allegation in isolation, the allegations when considered in totality overwhelmingly state a plausible claim that there was an intention to discriminate against Miao in violation of Section 1981. These allegations include:

- (1) from the moment Miao entered the aircraft, the flight attendant stared at him—a stare Miao felt before he understood it;

- (2) a white passenger with similar (or larger) luggage was never confronted, asked to move anything, or removed;
- (3) the flight attendant ignored that passenger and focused exclusively on Miao;
- (4) the flight attendant reacted disproportionately—yelling at Miao and threatening to involve the captain—after he temporarily placed his lunch bag on an empty seat;
- (5) after Miao complied, the flight attendant fabricated a story that he had hit her, leading to his removal; and
- (6) when Miao later attempted to board another United flight, he was stopped, delayed, and subjected to scrutiny about whether he intended to follow regulations—acts of retaliation for his complaint.

As Miao alleges, when viewing all the allegations in totality, he was singled out and treated differently than white passengers. The flight attendant only confronted Miao, and not any other non-Asian passengers. At least one other passenger was allowed to place two carry-on bags plus one other bag in the overhead bin. Neither that passenger, nor any other passenger, was similarly confronted or removed from the airplane. The complaint ultimately alleges, “It is clear that United intended to discriminate against Miao on the basis of his race and national origin as other non-Asian passengers were not treated in a similar manner or were removed from the

flight despite having similar bags that the United flight attendant took issue with.”

In his complaint, Miao set forth a grievance. The time to demand evidence is the summary judgment stage. Miao should be allowed to proceed with his case and conduct discovery, particularly regarding the passenger who witnessed the encounter and the role of the captain. In dismissing the complaint, the court of appeals effectively and wrongfully utilized a level of scrutiny appropriate for summary judgment in preventing Miao from developing and presenting his case.

Based on the above and foregoing, review and reversal of the court of appeals’ judgment are warranted.

C. Importance of the Issue

This Court’s precedents do not authorize courts to resolve factual disputes or draw inferences against plaintiffs at the pleading stage. Yet that is precisely what the court of appeals did here. By accepting United’s version of events—that Miao “disobeyed” and that this disobedience justified his removal—and by rejecting Miao’s contrary factual assertion that he complied, the court of appeals effectively decided the case on the merits without discovery, without witness testimony, and without any evidentiary record. In effect, the Seventh Circuit required Miao to identify a comparator whose conduct was identical in every respect—a “perfect comparator”—before he could even conduct discovery. This Court has never imposed such a requirement at the pleading stage.

The consequences of this approach extend far beyond Miao's case. If courts may dismiss discrimination claims at the pleading stage by resolving factual disputes against plaintiffs, then plaintiffs who are the victims of discrimination will be denied any opportunity to prove their claims. This is particularly troubling in cases where critical evidence—witness identities, internal communications, the testimony of employees—lies exclusively in the defendant's possession.

Without this Court's intervention, the pleading stage will become an insurmountable barrier not only for Miao, but for countless other plaintiffs seeking to vindicate their civil rights. Cases should be decided on the merits, not on the pleading strategies of corporate defendants. This case is an ideal vehicle to address this question. The factual record is clear, the legal error is stark, and Judge Ripple's dissent provides a compelling alternative framework.

Facts must shape judgments. Here, however, judgment was rendered before the facts were ever heard—the court accepted United's version of events, resolved disputed facts against Miao, and dismissed his claim without a single piece of evidence. For the foregoing reasons, the petition for a writ of certiorari should be granted. The court of appeals' judgment should be reversed, and the case remanded for further proceedings consistent with this Court's direction that plaintiffs like Miao—who have alleged specific, non-conclusory facts of discrimination—are entitled to be given the opportunity to prove their case.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, FILED JANUARY 13, 2026**

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-1649

YUBO MIAO,

Plaintiff-Appellant,

v.

UNITED AIRLINES, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 24 C 01345—**Charles P. Kocoras**, *Judge*.

ARGUED DECEMBER 11, 2025—DECIDED JANUARY 13, 2026

Before RIPPLE, SCUDDER, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Yubo Miao alleges that—after boarding a United Airlines aircraft—he was singled out for harsh treatment by a flight attendant and ultimately kicked off the plane because of his race. He filed this lawsuit against the airline, alleging violations of Title VI of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.

Appendix A

The district court granted United’s motion to dismiss for failure to state a claim. Because there’s no plausible allegation that Miao was discriminated against, we affirm.

I

This appeal arises from a motion to dismiss, which means we accept all well-pleaded allegations of fact as true and draw all reasonable inferences in the plaintiff’s favor. *Alarm Detection Sys., Inc. v. Village of Schaumburg*, 930 F.3d 812, 821 (7th Cir. 2019). Yubo Miao, an American citizen of Chinese descent, boarded a United Airlines flight from Chicago to San Diego. As he came down the aisle, a white flight attendant stared at him. Miao then placed his luggage—two suitcases and a lunch bag—in the overhead bin and took his seat.

The same flight attendant asked Miao to place his lunch bag under his seat, but Miao instead put it on the empty seat next to him. The flight attendant asked Miao a second time to move his lunch under his seat, but Miao responded that the bag had food in it, and so he would put it under the seat when other passengers in the seats next to him arrived. In response, the flight attendant yelled at Miao and threatened to tell the captain of the aircraft, at which point Miao immediately moved his lunch under his seat. Another passenger told Miao that he thought the flight attendant had acted disrespectfully.

Soon after Miao’s encounter with the flight attendant, a United Airlines supervisor told Miao that he had to leave the plane. While Miao had not made physical contact with

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the flight attendant, she claimed that Miao had hit her, and the aircraft's captain decided that Miao should be removed. Miao exited the plane.

Elsewhere in the overhead bins on the same flight there was similar luggage to what Miao had brought aboard: two suitcases and a bag of similar or slightly larger size than Miao's luggage. Those bags belonged to a white passenger, but that person was not asked to move their bags, confronted by flight attendants, or removed from the aircraft.

Miao filed a complaint with United, alleging race discrimination. United initially banned him from flying on its aircraft, but later relented, and allowed Miao to fly with the company again. Miao sent the airline a demand letter and filed a complaint with the U.S. Department of Transportation. On a later flight, a United employee stopped Miao from boarding, he was delayed for about 30 minutes, and he was repeatedly asked if he intended to follow federal regulations.

Miao filed this lawsuit in federal court, bringing claims under Title VI of the Civil Rights Act and 42 U.S.C. § 1981. United moved to dismiss and the district court granted that motion without prejudice. But the district court nowhere mentioned the possibility of amending the complaint and concluded by noting "Civil case terminated." Miao appeals only as to his § 1981 claim.

*Appendix A***II**

We review a district court’s dismissal for failure to state a claim de novo. *Fosnight v. Jones*, 41 F.4th 916, 921 (7th Cir. 2022). To withstand dismissal, a complaint must “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Speculative allegations, standing on their own, are not enough. *Id.*

Before proceeding to the merits, a word about jurisdiction. We may hear appeals from all “final decisions” of the district courts. 28 U.S.C. § 1291. In this case, dismissal was without prejudice, which generally doesn’t qualify. See *Hernandez v. Dart*, 814 F.3d 836, 840 (7th Cir. 2016). But § 1291 is to be read practically, not technically, meaning rulings that “terminate an action” count as final decisions. *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 408-09, 135 S.Ct. 897, 190 L.Ed.2d 789 (2015). Because the court below noted that the case was terminated, there’s reason to believe the district judge was finished. We’re also confident in our jurisdiction because Miao stipulated at oral argument that there was nothing left to do in the district court. See *Doermer v. Oxford Fin. Grp.*, 884 F.3d 643, 647-48 (7th Cir. 2018).

Turning to the complaint, the question is whether Miao plausibly alleged a claim under § 1981. That law protects “the equal right . . . to make and enforce contracts without respect to race.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 474, 126 S.Ct. 1246, 163 L.Ed.2d 1069 (2006) (citation modified). To allege this discrimination claim,

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Miao must plead that, but for his race, he would not have suffered the loss of a legally protected right to make and enforce a contract. *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 340-41, 140 S.Ct. 1009, 206 L.Ed.2d 356 (2020).

Miao argues that he plausibly alleged discrimination because (1) the flight attendant stared him down as he entered the aircraft, (2) other non-Asian passengers were allowed to place carry-on bags like Miao's in the overhead bins without being asked to move them, (3) the flight attendant overreacted to Miao placing his lunch box on an empty seat, (4) the flight attendant concocted a story about Miao hitting her as a pretext for his removal, and (5) Miao was later scrutinized when he attempted to board a different United flight.

These allegations do not add up to a § 1981 claim. Neither the flight attendant nor any other representative of the airline referenced Miao's race. That the flight attendant is white and Miao non-white, that she stared at Miao as he entered the aircraft, forcefully requested him to follow her instructions, made a false allegation of physical assault, and that United later subjected Miao to extra scrutiny do not support an inference of discrimination. That's because none of those facts, if true, tend to show that Miao was singled out because of his race. See *Kaminski v. Elite Staffing, Inc.*, 23 F.4th 774, 776 (7th Cir. 2022) (considering claims for discrimination under Title VII and the ADEA); *Smith v. Chi. Transit Auth.*, 806 F.3d 900, 904 (7th Cir. 2015) ("The legal analysis for discrimination claims under Title VII and § 1981 is identical.").

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The only possible allegation that suggests Miao was discriminated against is the experience of a white passenger on board the aircraft. But that allegation isn't enough, because there are obvious distinctions between what Miao alleges he did—repeatedly disobeying flight crew instructions—and what his proposed comparator did (bringing onto the aircraft the same amount of baggage as Miao did and stowing it in the overhead bin). Even focusing more narrowly on the flight attendant's initial request to move the lunch bag, it's not reasonable to infer that Miao was discriminated against because he was asked to move a bag while a white passenger was not. Miao argues that he did not ignore or defy instructions. There's a conclusory allegation to that effect, but it conflicts with detailed factual allegations in the complaint and should be set aside. See *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) (“[O]ur pleading rules do not tolerate factual inconsistencies in a complaint.”).

Miao wasn't required to allege that he was similarly situated to someone else to state a § 1981 claim. See *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 827 (7th Cir. 2014) (applying Title VII and noting that a “plaintiff is not required to identify similarly situated comparators at the pleading stage”). But in this case, the experience of a possible comparator is the only allegation that suggests what happened to Miao had anything to do with race. And because that comparison doesn't hold up to even the slightest scrutiny—as required by Rule 12(b)(6)—it's not enough to make Miao's claim plausible. See *Katti v. Arden*, 161 F.4th 217, 226-27 (4th Cir. 2025) (affirming dismissal of a § 1981 claim because a complaint fell “well

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short of alleging a similarly situated comparator” and otherwise relied on speculative allegations); *Joyner v. Morrison & Foerster LLP*, 140 F.4th 523, 529-33 (D.C. Cir. 2025) (affirming dismissal of a § 1981 claim because “general allegations about comparators do not provide a meaningful benchmark” to decide if differential treatment was racially motivated); cf. *Tamayo*, 526 F.3d at 1085 (a plaintiff stated a Title VII claim when she alleged that she and potential comparators were similarly situated). We agree with our dissenting colleague about the applicable legal framework. Our disagreement is only over how to apply those principles in this case. As we see it, there is nothing here, aside from conclusory allegations, to plausibly allege discrimination.

To survive a motion to dismiss, Miao needed to allege enough facts to allow for a plausible inference that United impaired his right to enforce a contract because of race. See *Comcast Corp.*, 589 U.S. at 341, 140 S.Ct. 1009. While the complaint provides a detailed account of what happened aboard United’s aircraft, we can only speculate that race had anything to do with it. Pursuant to Federal Rule of Civil Procedure 60(a), the district court shall amend the judgment to reflect that dismissal of Miao’s complaint was with prejudice.

AFFIRMED

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RIPPLE, *Circuit Judge*, dissenting.

Ever since their promulgation in 1938, the Federal Rules of Civil Procedure have brought to the federal courts the order and discipline necessary for the efficient and just resolution of federal litigation. Today's panel majority's decision does little to reinforce those qualities. Indeed, I respectfully suggest that it significantly dilutes them.

Just a year ago, in *Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1337 (7th Cir. 2024), our court emphasized eloquently the importance of order in the litigation process. Specifically, we emphasized the very different roles played by the complaint stage and the summary judgment stage in pretrial litigation. *Id.* at 1337-38. Usually, cases involving this distinction focus on whether the complaint adequately sets forth a cause of action. Here, there is no doubt that Mr. Miao's complaint presents a clear and comprehensive account of United's actions that, in his view, constitute a discriminatory denial of his right to passage on United Flight 2683 and to contract for passage on subsequent United flights free of racial discrimination. Indeed, the panel majority's detailed rendition of Mr. Miao's allegations demonstrates eloquently the clarity of the complaint.

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Even though the complaint sets forth a comprehensive description of Mr. Miao's encounter with United personnel, the panel majority nevertheless approves the dismissal of the complaint because it perceives a different, but somewhat related, infirmity. Employing an analysis that we normally associate with motions for summary judgment, it writes that, in its view, Mr. Miao's factual allegations do not hold up to "scrutiny." This holding is no different from saying that no rational jury could find that United acted as it did only because of Mr. Miao's race. Highlighting one phrase from the complaint and culling out another, the panel majority opinion accepts the argument that Mr. Miao violated an airline rule when, in response to the flight attendant's direction, he promptly removed his lunch from the overhead bin but, rather than immediately placing it under his seat, temporarily placed it on the seat next to him. It summarily rejects his assertion that he did not disobey the flight attendant's direction in finding this temporary resting place for his lunch. Having decided that this supposed violation played a role in the captain's decision to remove Mr. Miao from

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the aircraft, the panel majority concludes that there can be no liability under 42 U.S.C. § 1981.^{1 2}

1. In a letter from Mr. Miao to United, which was attached to his complaint, Mr. Miao stated that he would pursue his claim “[w]hether by either or both administrative complaint with the Department of Transportation/FAA or by filing suit in federal court . . . ” R.1-1 at 3. The Department of Transportation hears complaints through its Office of Aviation Consumer Protection. When a consumer files a complaint of discrimination, the DOT investigates the complaint and directs the airline to respond, ultimately issuing findings to the consumer.

This remedy was available to Mr. Miao, but he was not required to exhaust it before filing a claim in federal court under Section 1981. We have held that there is no administrative exhaustion requirement under Section 1981. *See Donaldson v. Taylor Prods. Div. of Tecumseh Prods. Co.*, 620 F.2d 155, 158 (7th Cir. 1980) (“We agree that there is no exhaustion requirement under either of the Civil Rights Acts,” referring to Title VII and 42 U.S.C. § 1981); *Waters v. Wisconsin Steel Works of Intern. Harvester Co.*, 502 F.2d 1309, 1316 (7th Cir. 1974) (“We are of the view, therefore, that plaintiffs could properly proceed against the union under Section 1981 without first exhausting any contractual remedies under the collective bargaining agreement.”).

2. Airlines enjoy some immunity under 49 U.S.C. § 44902(b). No party in this case suggests that this immunity extends to cases alleging racial discrimination under 42 U.S.C. § 1981. In *Abdallah v. Mesa Air Group, Inc.*, 83 F.4th 1006, 1017 (5th Cir. 2023), the Fifth Circuit held that “§ 44902(b) does not provide immunity for a § 1981 claim if a passenger’s protected status is the but-for cause of the airline’s decision to remove that passenger, thus rendering the airline’s action, in the words of the Second Circuit, ‘capricious or arbitrary.’ Hence a decision motivated by the passenger’s race alone would not be immune under that standard because, in the words of § 44902(b), the decision was not made because the passenger was ‘inimical to safety.’ On the other hand, immunity

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There are several reasons for rejecting the panel majority's *summary* conclusion. To begin, although a plaintiff can plead himself out of court by making factual allegations that are clearly incompatible with liability, such an argument always must be evaluated skeptically.³ Mr. Miao's statement that he temporarily placed his lunch on the seat next to him is not necessarily incompatible with his assertion that he did not disobey the flight attendant's direction. Certainly, he was entitled to maintain, at least at the pleading stage, that his action was a good faith effort to comply with the flight attendant's direction and, at the very least, amounted to substantial compliance with the attendant's direction as he understood it. The attendant wanted his lunch removed from the overhead bin so that larger pieces could be placed in that compartment. Moreover, Mr. Miao maintains that he intended to place his lunch under the seat at a time appropriate with the airline's concern about the storage of personal effects for taxi and takeoff.

Mr. Miao had a right to develop his theory factually beyond the complaint stage. A complaint can be dismissed only if it fails to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). However, the "plausibility" standard did not

would follow from a finding that the airline's decision was not arbitrary and capricious." (citations omitted).

3. See *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008).

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create a “probability requirement” for plaintiffs. *Alam v. Miller Brewing Co.*, 709 F.3d 662, 666 (7th Cir. 2013). The court’s role is not to assess whether the plaintiff’s allegations will bear out in discovery, but rather to ask only if the complaint contains enough factual details to conclude that the story could have happened. *See Swanson v. Citibank, N.A.*, 614 F.3d 400, 404-05 (7th Cir. 2010). And in doing so, we must “draw all reasonable inferences in the plaintiff’s favor.” *Alarm Detection Sys., Inc. v. Village of Schaumburg*, 930 F.3d 812, 821 (7th Cir. 2019).

Notably, Mr. Miao does not contest that, to recover under Section 1981, he must establish that race alone was the basis for his removal. He details a series of events that, in his view, resulted in his removal on that basis. I do not know whether he will prevail, but I see no justification for not allowing him to have his story tested at least in the crucible of the summary judgment process. Identifying, and proving, discrimination is a difficult task and usually requires reliance on circumstantial evidence. Mr. Miao will have to establish that the flight attendant treated him differently from persons of another race and did so intentionally. He will have to accomplish this feat through his own testimony and perhaps that of others. Key to this aspect of his case will no doubt be the testimony of the other passenger who witnessed at least part of the encounter and will be able to testify as to what was said and how it was said. The actual role of the captain, if any, also needs to be explored. At this stage of the litigation, no one has heard from the captain. We do not know the actual basis for the captain’s decision or even whether the captain made the decision. Even if we assume that the

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captain (rather than the supervisor who ordered Mr. Miao to leave the aircraft) made the decision, we are asked to take on faith the assertion that the decision was based at least partially on Mr. Miao having temporarily placed his lunch on the vacant seat next to him. In accepting that assertion, the majority draws an inference *against* Mr. Miao. Although the flight attendant maintained that Mr. Miao engaged in a physical altercation with her, Mr. Miao strenuously disputes this allegation, suggesting that if the flight attendant made such an allegation to the captain, it was a lie. Indeed, until we hear from the captain, there is the distinct possibility that the captain's sole reason for ordering Mr. Miao's removal was the report that he had engaged in a physical altercation. If so, the captain's action was based on a falsehood.

In any event, panel majority's opinion assumes that Mr. Miao's temporary placement of his lunch was at least a partial reason for United's drastic action and that therefore justification for Mr. Miao's removal rests, at least in part, on a non-discriminatory reason. This assumption rests, to put it mildly, purely on surmise and requires that we assume that the captain of an airliner would consider such drastic action appropriate. At this stage of the proceedings, the district court accepted uncritically such an assertion without any further factual development. The panel majority opinion attempts to fit this case into the mold of *Kaminski v. Elite Staffing, Inc.*, 23 F.4th 774, 776-77 (7th Cir. 2022). In that case, although noting that plaintiffs are not required to plead a prima facie case of discrimination, the court held that the complaint failed to state a claim because it did not include any allegation

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of the “facts or circumstances [that led the plaintiff] to believe her treatment was *because of* her membership in a protected class.” *Id.* at 778. Here, relying on *Kaminski*, the panel majority writes, “The only possible allegation that suggests Miao was discriminated against is the experience of a white passenger on board the aircraft.” *Miao*, Slip. Op. at 5. This analysis misapprehends, indeed ignores, Mr. Miao’s account when read as a totality. Mr. Miao’s account, fairly read, tells the story of a flight attendant who greeted him, an Asian, with suspicion, treated non-Asian passenger differently, raised her voice unprofessionally when dealing with him about the temporary placement of his lunch, and lied about his assaulting her. Read as a whole, these factual allegations are more than sufficient to support an inference of racial discrimination against Mr. Miao. “That is an entirely plausible scenario, whether or not it describes what ‘really’ went on in this plaintiff’s case.” *Swanson*, 614 F.3d at 404-05. These allegations are sufficient to sustain Mr. Miao’s case at the complaint stage. Later proceedings will determine whether he can prove his allegations.

As I noted at the beginning, the Federal Rules of Civil Procedure provide not only a rationale decision-making structure but also an intellectual discipline. The Rules arrest premature judicial decision-making until there has been a full and fair evaluation of the plaintiff’s case. They are an important tool of judicial self-restraint. As our court said not long ago, “[w]e appreciate that district judges may be impatient with suits that do not seem promising, because the judges doubt that plaintiffs will be able to marshal enough evidence to get to trial. But the

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time to demand evidence is the summary-judgment stage. All the complaint need do is state a grievance. Details and proofs come later.” *Thomas*, 120 F.4th at 1338.

I respectfully dissent.

**APPENDIX B — MEMORANDUM OPINION OF
THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION, FILED MARCH 18, 2025**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 C 01345

YUBO MIAO,

Plaintiff,

v.

UNITED AIRLINES, INC.,

Defendant.

Filed March 18, 2025

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

Plaintiff Yubo Miao, a United States citizen of Chinese descent, brings this suit against Defendant United Airlines, Inc. (“United”), under Title VI of the Civil Rights Act (“Title VI”), 42 U.S.C. § 2000d, and 42 U.S.C. § 1981, after he was removed from a United flight for allegedly failing to comply with the instructions of a United flight attendant.

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Before the Court is United's Motion to Dismiss Miao's Complaint. For the following reasons, United's Motion to Dismiss is granted.

BACKGROUND

The following facts come from the Complaint and are assumed true for the purposes of this motion. *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013). The Court accepts as true well-pleaded facts and draws all reasonable inferences in Miao's favor. *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011).

In June 2023, Miao was aboard a United flight from Chicago, Illinois to San Diego, California. During the boarding process, a flight attendant asked Miao to remove his lunchbox from the overhead storage compartment and to place it under his seat. Instead, Miao placed the lunchbox on the empty seat beside him. This prompted the flight attendant to ask Miao again to put the lunchbox underneath his seat. Miao informed the flight attendant that since the lunchbox had food, he wanted to wait until the other passenger arrived to place the food under his chair. When the flight attendant asked Miao to put the lunchbox under his seat a third time, he complied. Shortly after, a supervisor approached Miao and informed him that he needed to be removed from the plane because the flight attendant claimed that Miao hit her. Miao denied the allegations but exited the aircraft without issue.

During this time, another Caucasian passenger had a similar sized bag in the overhead storage bin. The

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Caucasian passenger was not approached by a flight attendant or removed from the aircraft.

Miao submitted a complaint to United about the racial discrimination he experienced onboard the flight. In response, Miao received correspondence from United, stating that he was banned from flying on its airways until the airline made a decision about Miao's complaint. After conducting their investigation, United removed Miao from their no-fly list but found that Miao made unwanted physical contact with the airline attendant. Miao was warned that any similar behavior in the future would result in "serious consequences." Miao's complaint regarding the racial discrimination he experienced was not addressed by the airline.

Afterwards, Miao submitted an Air Travel Service Complaint to the Department of Transportation. Miao also sent United a letter, demanding that the airline address the discrimination he experienced and compensate him for his suffering. At some point after this correspondence, United retaliated against Miao when he tried to board another United flight. Miao was not allowed to check in for his flight and was scrutinized by a United employee for 30 minutes.

On February 16, 2024, Miao filed his Complaint against United for race and national origin discrimination under Title VI and 42 U.S.C. § 1981. United seeks to dismiss both of these claims under Federal Rule of Civil Procedure 12(b)(6).

*Appendix B***LEGAL STANDARD**

A motion to dismiss under Rule 12(b)(6) “tests the sufficiency of the complaint, not the merits of the case.” *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations in the complaint must set forth a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To survive a Rule 12(b)(6) motion to dismiss, the Complaint only needs to include “sufficient facts to state a claim for relief that is plausible on its face.” *Cole v. Milwaukee Area Tech. Coll. Dist.*, 634 F.3d 901, 903 (7th Cir. 2011) (internal quotations omitted).

DISCUSSION**I. Count I: Violation of Title VI of Civil Rights Act of 1964**

Title VI prohibits discrimination on the basis of race, color, and national origin by any program or activity receiving federal assistance. 42 U.S.C. § 2000d. To state a claim under Title VI, Miao must sufficiently allege (1) that he was intentionally discriminated against on the grounds of his race or national origin and (2) that United is a recipient of federal financial assistance. *Beaulieu v. Ashford Univ.*, 529 F. Supp. 3d 834, 850 (N.D. Ill. 2021). “To adequately plead discrimination a plaintiff must allege factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Khan v. Midwestern Univ.*, 147 F. Supp. 3d 718, 720 (N.D. Ill. 2015) (citing *Adams v. City*

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of Indianapolis, 742 F.3d 720, 727 (7th Cir. 2014)) (internal citations omitted). Miao must also plausibly allege that he is a beneficiary of, applicant for, or participating in a federal funded program. *See Simpson v. Reynolds Metals Co.*, 629 F.2d 1226, 1235 (7th Cir. 1980); *see also Allen v. Bd. of Trs. Rock Valley Coll.*, 2021 WL 4034067, at *8 (N.D. Ill. 2021).¹

Miao alleges that he has recourse under Title VI because United received federal funding through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to assist with employee retention during the SARS-CoV-2 (“Coronavirus” or “COVID-19”) pandemic. At issue here is whether Miao was an intended

1. In recent years, some courts and other Circuits have moved away from the Seventh Circuit’s holding in *Simpson* (known as the “*Simpson Doctrine*”), finding it inconsistent with the Supreme Court’s ruling in *Nat’l Credit Union Admin. v. First Nat’l Bank & Tr. Co.*, 522 U.S. 479 (1998). *See e.g. Carnell Constr. Corp. v. Danville Redevelopment & Hous. Auth.*, 745 F.3d 703, 715 (4th Cir. 2014) (“Title VI does not require that an injured party be the intended beneficiary of federal funds.”); *see also Alexander v. Hunt*, 2018 WL 3801240, at *8 (D. Vt. 2018) (“In the wake of NCUA, a number of district courts have acknowledged that Title VI plaintiffs need not allege that they are the intended beneficiaries of any federally funded project in order to establish Title VI standing.”) However, this Court has consistently followed *Simpson* and will continue to do so here. *See Collins v. Ctrs. for Medicare and Medicaid Servs.*, 2025 WL 599630, at *3 (7th Cir. 2025); *Veljkovic v. Bd. of Educ. of City of Chi.*, 2020 WL 7626735, at *4 (N.D. Ill. 2020); *Shebley v. United Cont’l Holdings, Inc.*, 357 F. Supp. 3d 684, 694 (N.D. Ill. 2019); *Doe v. Woodridge Elementary Sch. Dist. No. 68 Bd. of Educ.*, 2005 WL 910732, at *2 (N.D. Ill. 2005).

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beneficiary of the financial federal assistance United received for COVID-19.

Miao concedes that the purpose for the federal funding received by United was for employment retention. However, Miao points to a section of the CARES Act which states that the Department of Transportation could temporarily require an air carrier that receives CARES Act funding “to maintain scheduled air transportation service deemed necessary to ensure services to any point served by the carrier prior to March 1, 2020.” Dkt. # 32, at 4. This, Miao argues, shows that the intended beneficiaries for the CARES Act funding were also the passengers because they are the only beneficiaries of an airline maintaining their transportation services. However, this expanded interpretation is unsupported.

Upon review of the CARES Act, it is evident that the CARES Act was enacted for the purpose of assisting companies in retaining their employees and overall economic stabilization during the COVID-19 pandemic. Section 9044 of the CARES Act, highlighted by Miao, is contained under a section titled “Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy.” The majority of the subsections within this section apply to companies impacted by COVID-19, not consumers or the general public. The few sections that do apply to consumers unambiguously refer to them within the section.

Section 9044 of the CARES Act does not directly refer to consumers. The plain language of the statute also does

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not support Miao's claim that consumers were the intended beneficiary of this subsection. The relevant section asks the Secretary of Transportation to consider the need to maintain the healthcare system and pharmaceutical supply chains when considering whether to exercise the authority granted by the CARES Act. Thus, ensuring that the healthcare system is not interrupted appears to be the targeted goal behind this subsection.

Further, even if the subsection was interpreted to include consumers as intended beneficiaries, it would not help Miao's claims. As United points out, the authority granted under Section 9044 terminated on March 1, 2022, over a year before Miao was removed from the United flight.

At any rate, Miao cannot amend the Complaint through arguments in a response brief. *See U.S. ex rel. Sibley v. Univ. of Chi. Med. Ctr.*, 486 F. Supp. 3d 1210, 1219 (N.D. Ill. 2020) ("It is an axiomatic rule that a plaintiff may not amend his complaint in his response brief") (internal quotations omitted). While Miao points to Section 9044 to show that he was an intended beneficiary, the Complaint only states that United received federal financial assistance through the CARES Act "in order to retain employees during the Coronavirus pandemic." Dkt. # 1, ¶ 39. The Court can only consider the allegations made in the Complaint and not any subsequent arguments made in Miao's response brief.

Miao has failed to sufficiently plead that he was an intended beneficiary of the federal financial assistance

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given to United through the CARES Act. As such, Count I of the Complaint is dismissed without prejudice.

II. Count II: Section 1981

Section 1981 prohibits private actors from discriminating on the basis of race against those seeking to make and enforce contracts. *Petrovic v. Enter. Leasing Co. of Chi.*, LLC, 513 F. App'x 609, 610 (7th Cir. 2013). “[T]he term ‘make and enforce contracts’ includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b). To support a claim under Section 1981, Miao must sufficiently allege that (1) he is a member of a racial minority, (2) United intended to discriminate against him on the basis of race, and (3) United’s discrimination interfered with Miao’s rights under Section 1981. *See Black Agents & Brokers Agency, Inc. v. Near N. Ins. Brokerage, Inc.*, 409 F.3d 833, 837 (7th Cir. 2005). Miao alleges that he is an Asian-American, which satisfies the first element. Here, a contract between the parties was created when Miao purchased an airline ticket to fly with United. If United failed to perform its part of the contract because it discriminated against Miao on account of his race, the Complaint successfully raises a Section 1981 claim. *See Shebley*, 357 F. Supp. 3d at 692 (“Lebanese-American airline passengers who were removed from their flight stated [Section] 1981 claim against airline”).

Thus, the Court must now determine if the Complaint plausibly alleges that United intentionally discriminated

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against Miao. See *Van v. Ford Motor Co.*, 2016 WL 1182001, at *3 (N.D. Ill. 2016) (“To survive a motion to dismiss, plaintiffs ‘cannot plead discrimination in a conclusory fashion’ but must plead facts to show or raise a plausible inference that the defendant discriminated against the plaintiffs based on their race”) (cleaned up); see also *Jafree v. Barber*, 689 F.2d 640, 643 (7th Cir. 1982) (“To sufficiently state a cause of action the plaintiff must allege some facts that demonstrate that his race was the reason for the defendant’s inaction”). “Discriminatory intent may [be] proven directly or indirectly.” *Sartor v. Spherion Corp.*, 388 F.3d 275, 278 (7th Cir. 2004). “The same requirements for proving discrimination apply to claims under Title VII, [Section] 1981, and [Section] 1983.” *Egonmwan v. Cook Cnty. Sheriff’s Dep’t*, 602 F.3d 845, n.7 (7th Cir. 2010).

United argues that the Complaint fails to sufficiently allege that United intentionally discriminated against Miao. According to United, Miao fails to point to a comparable passenger not a member of his protected class who was “similarly situated” to Miao but treated differently. See *de Lima Silva v. Dep’t of Corr.*, 917 F.3d 546, 559 (7th Cir. 2019) (“Discrimination may be inferred when an employer treats an employee in a protected class less favorably than it treats a similarly-situated employee outside that class”). “Similarly situated” means directly comparable “in all material respects.” *Reed v. Freedom Mortg. Corp.*, 869 F.3d 543, 549 (7th Cir. 2017). Miao’s Complaint does allege that other non-Asian passengers with similar bags were not asked to remove them from the overhead bin or removed from the flight. Dkt. # 1,

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¶ 40. However, United argues that this allegation is not enough to show that those passengers were similarly situated to Miao because Miao defied the flight attendant's instructions multiple times. The Complaint makes no allegation that the non-Asian passengers also disobeyed direct instructions.

With all of the dangers inherent in flying as a passenger in these times, along with the regular inconveniences of cancelled flights, late arriving planes, and a myriad of other obstacles impeding one's enjoyment and the benefits supplied by air travel, this case involves nothing caused by these exigencies.

Stripped to its essentials, the essence of this litigation involves the placement of carry-on bags and who decides where they must be placed. As has been argued by United, the purchase of an airline ticket obligates the purchaser to follow the instructions of flight attendants. The purchase of an airline ticket carries with it an agreement to follow the instructions of flight attendants and other flight crew members.

After boarding the plane, Miao's Complaint states that he placed his two suitcases and a lunchbox in the overhead bin and sat down in his seat. Shortly thereafter, the flight attendant approached Miao and told him to move his lunchbox to under his seat. Instead of doing as she commanded, Miao grabbed his lunchbox and placed it on the empty seat next to him. When the flight attendant returned and told Miao again to put the lunchbox under the seat, Miao did not do as instructed by the flight

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attendant but responded by stating the box contained food, and he would place it under the seat when the other passenger arrived.

By his own admissions in his Complaint, Miao was guilty of two instances of misconduct. It is not within the province of an airline passenger to direct where carry-on bags should be stowed. Federal aviation regulations require airlines to ensure that all carry-on baggage is properly stowed prior to take-off and further prohibit airline passengers from interfering with a crew member's performance of his or her duties. By disobeying the flight attendant's instructions, Miao's conduct violated his obligations as a passenger.

By introducing the concept of a "similarly situated" comparator in his Complaint in his attempt to establish a *prima facie* case of racial discrimination, it is essential that the comparator be similar in all respects. The "Caucasian passenger" alleged to fill that role was never confronted by a flight attendant or removed from the plane. Additionally, the Caucasian passenger is not alleged to have ignored or otherwise defied instructions from a flight attendant, permitting racial discrimination to be inferred in their better treatment.

The only reasonable inference to be drawn in this case, supplied principally by Miao's own conduct as outlined in his Complaint, is that he was not the victim of discrimination of any kind. Count II is dismissed without prejudice.

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CONCLUSION

For the foregoing reasons, United's Motion to Dismiss [12] is granted as to both Count I and Count II. Civil case terminated. It is so ordered.

Dated: March 18, 2025

/s/ Charles P. Kocoras
Charles P. Kocoras
United States District Judge