


**In the
Supreme Court of the United States**



KEVIN D. WICKSTROM, ET AL.,

Petitioners,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit**

SUPPLEMENTAL BRIEF OF PETITIONERS

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**PETITIONERS' SUPPLEMENTAL BRIEF
PURSUANT TO RULE 15.8**

Pursuant to Supreme Court Rule 15.8, Petitioners¹ respectfully submit this supplemental brief to call the Court's attention to intervening matter not available at the time of the petition—namely, discovery and summary judgment filings in a parallel proceeding before the same district judge involving the identical defendant union, employer, vaccine mandate, accommodation process, Letter of Agreement 21-02, and internal grievance proceedings at issue in this case.

In *Oka v. Air Line Pilots Ass'n, Int'l*, No. 1:23-cv-15793 (N.D. Ill.), Plaintiff Oka—a United Airlines pilot subjected to the same vaccination policy—survived the pleading stage on his duty-of-fair-representation claim against ALPA and proceeded to discovery. On February 24, 2026, Oka filed his opposition to ALPA's motion for summary judgment, supported by evidence obtained through that discovery. ALPA and United Airlines filed replies on March 10, 2026. On March 24, 2026, the district court granted summary judgment to both defendants.

That record materially reinforces both Questions Presented. It does so in a uniquely concrete way—by supplying the very evidence the court of appeals held was lacking. The *Oka* record confirms that the decision

¹ This supplemental brief is filed on behalf of all Petitioners, who are each individuals: Kevin D. Wickstrom; James R. Breitsprecher; John Ellis; Christopher P. Gates; Forace Hogan; Erik W. Wichmann; Robert D. Williamson

below rests on a pleading standard requiring plaintiffs to allege facts that, by their nature, are unavailable absent discovery.

I. The *Oka* Discovery Produced the Evidence the Seventh Circuit Held Was Missing

The Seventh Circuit affirmed dismissal of Petitioners' complaint because it found insufficient factual allegations of subjective intent, active union involvement, and discriminatory motive. The *Oka* discovery has now produced direct evidence on each of these points—evidence that is materially inconsistent with representations ALPA made in Petitioners' case.

Active union complicity. ALPA represented to the courts below that it had no involvement in United's accommodation process and merely ensured compliance with the collective bargaining agreement. The *Oka* discovery undermines that position. Internal emails show that ALPA's Contract Interpretation and Administration Committee member Brad Hunnewell communicated directly with United's Sara Nau to: shorten the termination timeline for religiously accommodated pilots from 72 months to 60 months; to engineer a furlough provision barring religious pilots from returning to work while vaccinated pilots continued to fly; and to lobby for sick leave access for medically accommodated pilots—a benefit not included in United's original plan and one that ALPA simultaneously argued in a separate proceeding violated the plain language of the collective bargaining agreement. When United confirmed the furlough arrangement, Hunnewell replied: "Yes, the magic words I was looking for!" *Oka*, Supp.App.8a.

As the *Oka* opposition states:

ALPA’s complicity began long before UAL announced its mandate, when ALPA negotiated Letter of Agreement 21-02 (‘LOA 21-02’), an agreement one ALPA representative admitted was designed with consequences for those who don’t take the vaccine voluntarily. . . . ALPA communications reveal a union that did not merely acquiesce in discrimination, it engineered it.

Id. at 1.

ALPA has characterized LOA 21-02 as an agreement designed to incentivize voluntary vaccination. The *Oka* record reveals that its admitted purpose was to impose consequences on pilots who did not comply—a material distinction—and that it was implemented without the membership ratification required by ALPA’s own governing documents for agreements substantially affecting pilots’ career security. Pet.App.3a.

Notably, the record shows that ALPA and United had been discussing vaccination mandates for approximately nine months before the policy took effect—undermining any suggestion that ALPA’s failure to invoke the Railway Labor Act’s bargaining and status quo protections was the product of time pressure rather than deliberate choice. *See Oka*, Supp.App.46a–47a (detailing United’s internal planning as early as May 2021 and the existence of multiple quickly negotiated COVID-related agreements during the same period).

Discriminatory animus. The discovery uncovered extensive evidence of hostility at the highest levels of ALPA’s leadership. MEC Chair Todd Insler mocked religious accommodation requests in writing.

Insler and MEC Grievance Chair Joe Pedata jointly ridiculed individual religious pilots in text messages. MEC Negotiating Committee Chair Jeff Brown, Hunnewell, and others participated in text threads agreeing that all religiously accommodated pilots should be fired. ALPA's First Vice President told Captain Oka that religious objectors were viewed as "frauds" by union leadership. *Id.* at 1–2, 9–10.

Predetermined grievance outcomes. When informed that a pilot disciplined for refusing vaccination was about to be represented by ALPA in grievance proceedings, MEC Chair Insler stated: "if a pilot gets disciplined for not getting vaccinated then the Union will represent them but they will lose. He went so far as to say that it was certain they will lose." *Id.* at 10–11. ALPA's Grievance Vice Chair, Andy Loeffler, stated at the Grievance Review Panel that the status quo grievances would not proceed to the System Board because they represented "a case we don't believe in." *Id.* at 12. Notably, Loeffler also served as a Board member in the grievance arbitration and was a signatory to the System Board findings—findings that characterized the vaccine policy as a new employment requirement rather than a pilot qualification. This evidence further supports Petitioners' allegations that the grievance process was predetermined. The district court's order itself acknowledges that Oka presented a 133-slide presentation over approximately five hours at the GRP hearing, yet the GRP's written decision dismissing the grievance consisted of a single conclusory paragraph. *Oka*, Supp.App.51a. An ALPA official with 34 years of experience testified that she had never witnessed a pilot forced to research and argue his own grievance without union support in her entire career. *Id.*

Concealment. ALPA was the source of the disparity between religious and medical accommodations—and then faulted pilots for not discovering and formally grieving those secret arrangements. ALPA’s own representative acknowledged at the Grievance Review Panel that “there are problems with the leave process which eventually became apparent, and that the leave process may be discriminatory.” Despite this acknowledgment, ALPA took no action. *Id.* at 11, 13.

II. This Development Bears Directly on Both Questions Presented

Question 1 asks whether a union’s duty of fair representation includes an obligation to enforce the Railway Labor Act’s status quo requirements, or whether union “discretion” extends to declining enforcement of mandatory statutory protections when members face termination. The *Oka* evidence reveals that ALPA was not exercising neutral discretion. It was actively engineering punitive outcomes for one group of pilots while securing preferential treatment for another—using the very statutory framework it now claims gave it discretion to do nothing. That is not the exercise of discretion. It is the use of union authority to facilitate and entrench discriminatory outcomes. The question of whether “discretion” can encompass such conduct warrants this Court’s review.

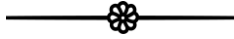
Question 2 asks whether a duty-of-fair-representation claim may be dismissed at the pleading stage for failure to prove subjective bad faith or discriminatory intent before discovery. The *Oka* proceeding provides a direct, real-world answer: the evidence of bad faith and discriminatory intent exists, but it resides entirely within the union’s internal files—in text messages,

emails, and internal communications accessible only through discovery. The Seventh Circuit's decision required Petitioners to plead facts they had no means of obtaining. *Oka* demonstrates that the pleading standard applied below operates as a categorical bar to otherwise meritorious claims by demanding proof of facts that, by their nature, cannot be alleged without discovery access. Significantly, in its March 10, 2026 reply brief, ALPA contests the legal significance of the discovery materials while accepting the underlying record for purposes of summary judgment—confirming that the facts are genuine and that the only barrier to their emergence was the pre-discovery dismissal the Seventh Circuit affirmed. *Oka*, Supp.App.22a.

The district court's subsequent summary judgment ruling further underscores this point. After allowing *Oka* to proceed beyond the pleading stage, the court evaluated a developed evidentiary record consisting of internal union communications, negotiations with the employer, and detailed factual context surrounding the grievance process—the very categories of evidence unavailable to Petitioners here. The court's assessment of intent, justification, and pretext was conducted on a full factual record that could exist only because discovery occurred. That Petitioners were denied the opportunity to develop a comparable record is precisely the problem the petition identifies.

The significance of this development is underscored by a further fact. In its reply brief in *Oka*, filed March 10, 2026, ALPA affirmatively cited the Seventh Circuit's decision in Petitioners' case—*Wickstrom v. ALPA*, 156 F.4th 835 (7th Cir. 2025)—to support its argument that it owes no duty to pilots with respect to their individual statutory rights. *Oka*, Supp.App.39a. Respondent

is already deploying the decision below as a litigation shield in parallel proceedings involving the same union and the same policy. This Court's review is needed to determine whether that shield is legally sound.



CONCLUSION

A parallel case involving the same union, the same employer, the same policy, and the same district judge has now produced—through discovery—the very evidence the Seventh Circuit held Petitioners failed to plead. This intervening development confirms that the Questions Presented are cert-worthy and that the decision below warrants this Court's review. Petitioners respectfully request that the Court consider this supplemental brief in deciding whether to grant the petition for a writ of certiorari.

Respectfully submitted,

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