No. _____

In The

Supreme Court of the United States

———— ♦ ————

BAHIG SALIBA,

Petitioner,

v.

ALLIED PILOTS ASSOCIATION

Respondent.

———— ♦ ————

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

———— ♦ ————

PETITION FOR A WRIT OF CERTIORARI

———— ♦ ————

Bahig Saliba
[redacted]
Petitioner in pro se

QUESTIONS PRESENTED

Whether a collective bargaining agent has authority to negotiate terms and conditions that impact the Federal Aviation Administration (FAA) pilot medical certification standards, pilot authorities, and ability to secure a right to compensation created in the Federal Aviation Act of 1958 (The Act), and whether The Act gives the Petitioner a private right to action.

Whether by adopting and supporting the air carrier's demands for a medical treatment(s) or procedure(s) that directly impact the Petitioner's FAA medical certification standards, and by refusing to employ a defense strategy supported by authorities vested in the Petitioner by law during a grievance process, the Respondent abused protections afforded to it by the Supreme Court and the Railway Labor Act (RLA) and failed in its duty to fairly, in good faith, and without discrimination represent the Petitioner.

PARTIES TO THE PROCEEDING

Petitioner and Plaintiff-Appellant Below

Bahig Saliba, pro se litigant.

Respondent and Defendant-Appellee below

Allied Pilots Association (APA), a collective bargaining agent representing the pilots in the service of American Airlines Inc. (AA).

LIST OF PROCEEDINGS

Bahig Saliba v. Allied Pilots Association, No. 2:22-cv-01025-PHX-DLR, U.S. District Court for the District of Arizona.

- Judgement entered March 27, 2023.

Bahig Saliba v. Allied Pilots Association, No. 23-15631 United States Court of Appeals for the Ninth Circuit.

- Judgment entered April 30, 2024.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The District Court ruled, and the Ninth Circuit upheld in a Memorandum:

1- The Plaintiff does not have a private right to action to recover compensation owed under aviation law violations, and

2- The APA did not violate its duty of fair representation.

JURISDICTION

Judgement was entered April 30, 2024, by the Ninth Circuit court of appeals. No petition for rehearing was timely filed in the case.

Jurisdiction is found under *28 U.S.C.A. §1254(1)*

STATUTORY PROVISIONS/PUBLIC LAW

Federal Aviation Act of 1958 (The Act).

Title IV, Sec. 401 K (1) "Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and

copilots who are engaged in interstate air transportation withing the continental United States…"
and (5) "…and who is properly qualified to serve as, and hold a currently effective airman certificate authorizing him to serve as such pilot or copilot…"

Title III, Sec. 301 (b) "…Administrator shall have no pecuniary interest in or own any stock in or bonds of any aeronautical enterprise nor shall he engage in any other business, vocation, or employment."

Title VI Sec. 610 (a)(2), (3) and (5)
(a) It shall be unlawful–
(2) For any person to serve in any capacity as an airman in connection with any civil aircraft … in air commerce without an
airman certificate authorizing him to serve in such capacity, or in violation of any term,
condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this title.
(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed,
(5) For any person to operate aircraft in air commerce in violation on any other rule, regulation, or certificate of the Administrator under this title.
Title X Sec. 1005 (e)
(e) It shall be the duty of every person subject to this Act, and its agents and employees, to observe and comply with any order, rule, regulation, or certificate issued by the Administrator or the Board under this Act affecting such person so long as the same shall remain in effect."

Railway Labor Act (RLA)

Sec. 2. In (4) and (5)
(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.
(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

FEDERAL REGULATIONS

14 CFR Part 1
Definition of Administrator - means the Federal Aviation Administrator or any person to whom he has delegated his authority in the matter concerned.

14 CFR § 61.53 (a)
"…no person who holds a medical certificate issued under part 67 of this
chapter may act as pilot in command[1], or in any other capacity as a required pilot crewmember, while that person:

(1) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation…"

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[1] 14 CFR § 1.1 defines Pilot in command as the person who (1) Has the final authority and responsible for the operation and safety of the flight. (2) Has been designated as pilot in command before or during the flight, and (3) Holds the appropriate category, class, and type rating, it appropriate, for the conduct of the flight.

14 CFR Part 67

Sets the standards for First-, Second-, or third-class pilot medical certificates and is devoid of any required medical treatment or procedure for setting the medical standards.

14 CFR §§ 91.3 and 91.11

91.3 – Responsibility and authority of the pilot in command. (a) The pilot in command of an aircraft is directly responsible for and is the final authority as to, the operation of that aircraft.

and

91.11 – No person may assault, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

14 CFR §117.5 (d)

(d) – As part of the dispatch or flight release, as applicable, each flight crewmember must affirmatively state he or she is fit for duty prior to commencing flight.

14 CFR §121.383 (a)(1)(2)(i)

(a) No certificate holder may use any person as an airman nor may any person serve as an airman unless that person–
(1) Holds an appropriate current airman certificate issued by the FAA;
(2) Has in his or her possession while engaged in operations under this part –
(i) Any required appropriate current airman and medical certificates.

TSA Security Directives SD1544-21-2 and SD1542-21-01

Exempting persons from wearing masks in §F3
(3) People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

U.S. CODE

18 U.S. Code §1001 (a)(1)(2)
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact.
(2) makes any materially false, fictitious, or fraudulent statement or representation.

49 U.S. Code §114 (g)(2)
"The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency"

49 U.S. CODE §42112
See The Act Title IV, Sec. 401 K (1) thru (5). Passages from The Act coded under 49 U.S. Code.

STATEMENT OF THE CASE

The Petitioner is an airline Captain who provides transportation at American Airlines Inc., (AA). The Petitioner and AA are subject to PUBLIC LAW 85-726-Aug. 23, 1958, also known as the Federal Aviation Act of 1958 (The Act), the Railway Labor Act, (RLA), and 14 CFR Parts 1, 61, 67, 91, 117, and 121.

The Respondent, The Allied Pilots Association (APA), is the collective bargaining agent who represents the Petitioner. The APA's sole role, as detailed in The Act, Title IV Sec. K (3) and the RLA, is to negotiate for rates of pay, work rules, and working conditions. An FAA pilot medical certification and process are not within the mandate of the APA or the RLA.

The Act, in Title IV, Sec. 401(1) creates a pilot and copilot right to compensation by air carriers. Title IV, Sec. 401(5) requires that pilots and copilots are qualified, including medically certificated by the FAA, to serve in their capacity; thus, any mandate or interference that impairs or renders a pilot's FAA medical certification invalid, **attacks the right to compensation** (emphasis added). Arguably, the right demands a risk versus benefit assessment that must be reserved for the pilot, one of the reasons the FAA may not impose any medical treatment(s) or procedure(s) impairing a pilot medical certification standard.

The FAA is the single authority that sets separate and independent processes and standards for certification of pilots and air carriers. Neither The Act, the FAA, or the RLA grant AA or the APA authority or any role in the determination of pilot medical certification standards, the issuance or maintenance of such certification, and pilot

obligations or declarations. The process is restricted to the pilot, the FAA, and the FAA Aeromedical Examiner (AME), a physician authorized by the FAA who conducts the examination.

There is also no evidence of any Congressional intent to authorize the APA or AA to make determinations or assessments respecting FAA pilot medical certification standards, authorities, or the methods in which a pilot maintains such standards affecting the obligations under 14 CFR §61.53 and the declarations required under 14 CFR §117.5, or to negotiate any terms impacting such authorities or standards.

It is of great benefit at this point to provide a short narrative of the Public Policy process of the FAA pilot medical certification and authorities.

The FAA pilot medical certification is founded on self-disclosure where informed consent is bedrock. Neither The Act nor the FAA rules give the pilot authority that the pilot can then delegate to other persons in making health decision affecting the medical certification standard. In other words, the pilot obligations do not allow any other person, including the AME[2], to dictate any medical treatment or procedure, and the pilot duty is to prevent that occurrence. The decision for any medical treatment(s) or procedure(s), or any activity impacting the FAA medical standards, is strictly the pilots. The medical certification is inextricably tied to pilot legal obligations and rights.

[2] The FAA does not and cannot prescribe any treatment or procedure other than what is required for an examination.

A pilot applicant makes declarations on FAA form 8500-8 under pains of 18 U.S. Code §1001. The pilot and AME then sign a Medical Certificate document indicating the applicant meets the FAA medical standards and sets the limitations and obligations. The pilot must continually meet said standards under §61.53 when exercising authority. In compliance with the standard, the rule in §61.53 creates a pilot obligation and ultimate authority in assessing fitness for duty. It states in part in (a) that:

> ***"…no person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command[3], or in any other capacity as a required pilot crewmember, while that person:***
> ***(2) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation…"***

The rule clearly vests the obligation and authority in the pilot who holds the medical certificate to make that determination. The rule is the legal interpretation that sets the bar for a pilot medical condition in planning, preparation, and for the entire time a pilot is assigned duty or is operating an aircraft. In other words, compliance with the medical standards does not begin at the flight deck door, as the lower Court inferred in its

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[3] 14 CFR § 1.1 defines Pilot in command as the person who (1) Has the final authority and responsible for the operation and safety of the flight. (2) Has been designated as pilot in command before or during the flight, and (3) Holds the appropriate category, class, and type rating, it appropriate, for the conduct of the flight.

ruling, and pilots must use their personal knowledge to make that determination.

For example, pilots are warned not to engage in scuba diving, blood donation, or consuming alcohol or over the counter drugs when planning on operating aircraft, or when they know or have a reason to know the effects of any activity that would impair their condition and create a deficiency, including the simple consumption of a meal. The decision is reserved for the pilot.

During the announced pandemic in early 2020, AA implemented, and the APA adopted a purported "non-opposing" position to the airline's implementation of a mandatory policy of restricting a pilot's breathing by covering the nose and mouth while on duty.

The FAA did not regulate such practice; thus, a pilot who restricts his breathing in any way while performing duty is in legal no-man's land. There has never been any FAA legal guidance or assurances that the pilot who chooses to restrict breathing is complying with the FAA medical standards under §61.53[4].

Accordingly, during that time, the Transportation Security Administration (TSA) issued an exemption in their Security Directives SD1544-21-02, aircraft, and SD1542-21-01, airport operators' series of mask orders in §F3 that conforms to pilot authority. It exempts

> ***"People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant***

[4] As a reminder, and it is required to remain attached to the medical certificate, the rule is printed on the document.

> ***workplace safety guidelines or federal regulations."***

The exemption in §F3 also conformed to 49 U.S. Code §114 (g)(2) where

> ***"The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency."***

The "non-opposing" position adopted by the APA, which remains a position held today, in support of mandatory restriction of pilot breathing was not codified in any agreement by following §156 of the RLA.

The APA supported their legal argument by relying on an FAA publication titled Safety Alert for Operators or (SAFO20009). The SAFO20009 is advisory in nature and not regulatory or legally binding. It states:

> ***"A SAFO contains important safety information and may include recommended action. Besides the specific action recommended in a SAFO, an alternative action may be as effective in addressing the safety issue named in the SAFO. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies."***

By adopting a position supporting AA's mandatory policy very early on, the APA not only exceeded their mandate by superseding the pilot authority, but it locked itself in the non-opposing position and did not deviate. The APA was operating outside its mandate to negotiate for rates of pay, work rules, and working conditions where the authority of a pilot is not negotiable. The position directed and shaped the APA actions going forward in the representational process in this case.

For example, on March 25, 2021, the APA signed a Letter of Agreement with AA (LOA-21-002). The LOA-21-002 was not part of this case but highlights a pattern of behavior of invading Public Policy and pilot authority that is detrimental to aviation safety. LOA-21-002, which was not voted on by the membership[5], incentivized medical treatments for pilots. This event is of critical importance because on April 19, 2021, the FAA paused the J&J product for blood clotting and did not reauthorize it until December 23, 2022. The pilot group was not informed of the pause by AA, and to the best of the Petitioner's knowledge, neither did the APA. It is important to note that airline pilots rely almost exclusively on information flow and guidance from the airline flight department. A person could reasonably conclude, since the product required a single shot, that many pilots took the unauthorized drug invalidating their medical and continue to operate aircraft at AA today.

Financially incentivizing decision-making by pilots, as later discussed, is in contradiction to Congressional intent. Also, Invading Public Policy can be detrimental.

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[5] The APA leadership favored and prompted pilots to cover their nose and mouth and the uptake of the medical treatment by pilots.

In August of 2023, as evidence of contradiction and in a reversal to its position respecting LOA-21-002, the APA reached a new agreement with AA, voted on by the pilots, containing a provision that denies AA the right to demand any medical procedure(s) not required by the FAA[6] for a First-Class pilot medical certification.

The new agreement is a good indicator and highlights AA pilots' displeasure with the APA's prior position. However, the new agreement created new "qualifications" for pilots that are non-existent or addressed by the FAA. The new qualifications segregated pilots who accepted the medical treatment from those who did not in contravention to 14 CFR §121.383 (a)(2)(i)[7], denying certain pilots their full right under The Act. To a detriment, the APA manipulated and invaded Public Policy and pilot rights.

In the meantime, pilots who refused the AA mandatory policy of restricting their breathing were disciplined outside the Collective Bargaining Agreement (CBA) grievance process at first. After some pilots raised objections to the discipline, the APA, once again in agreement with AA and in violation of pilot authority, invoked the CBA grievance process

AA, in coordination with the APA, disciplined pilots who exercised their authority. In short, the APA made a determination of health reserved for pilots, did not enter into an agreement with AA by following §156 of the RLA,

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[6] As noted, the FAA does not require any medical treatment or procedure for certification.

[7] §121.383 (a)(2)(i) requires airlines to use only FAA certificated pilots. By demanding all pilots accept the medical treatment the airline created a distinct and an airline-specific medical standard.

used the grievance process to force compliance by the pilots overstepping their authority, and violated a pilot right created in The Act.

The Petitioner rejected all of AA's policies that impacted his FAA medical standard in any way, including that of mandatory breathing restriction while on duty. As a result, he was suspended and subjected to the disciplinary process outlined in the CBA resulting in his full suspension without pay or benefits.

The APA refused to employ the one valid legal defense the Petitioner needed in support of his authority as outlined in the law. The APA claimed that the strategy was not "legally sound" while at the same time not offering any defense strategy in the run up to the disciplinary hearing, even when the Petitioner requested the full APA representation.

The APA claimed, and the Lower Court agreed in a play on semantics, that the Petitioner did not "affirmatively" request the APA representation. To affirmatively express approval or agreement, a competent person, and it would be irrational otherwise, must have a good understanding of the defense and process; thus, a reasonable person would conclude that, while the APA has the obligation to represent the Petitioner in good faith, the Petitioner has the right to learn of the strategy and the APA did not have or provide any. The APA built an insurmountable obstacle expecting the Petitioner to capitulate to their irrational position, a position they adopted in favor of AA.

Although the APA holds no authority, and the rule only authorizes the pilot to make the ultimate determination of physical and mental fitness in

preparation to operate aircraft, the APA lawyer, Rupa Baskaran, relying on SAFO20009 in support of the APA position made the unequivocal statement that the

> ***"…APA does not agree with your position that the Company's mask policy violates FAR 61.53, nor does it agree the Company's mask policy is in violation of your rights in any way…"***

The statement made by Baskaran is the "***smoking gun"*** in this case (emphasis added). By adopting that position well before the need for any representation, the APA had already sealed the fate of the outcome of any grievance for the Petitioner and all the represented pilots and attacked the Petitioner's right in The Act.

There was nowhere to go, and the APA could not, even if it desired, and it did not, fairly represent the Petitioner. The APA handicapped the process by trading a critical, and the only legally sound defense, in favor of its arbitrary and irrational support of a mandated policy created by AA, a policy that created a deficiency not addressed or regulated by the FAA medical standards.

In adopting a negotiating position favoring AA's mandatory policy that violates the rights, legal obligations, and authority of the Petitioner, the APA discriminated against the Petitioner and violated the law.

The APA did not, nor it could in good faith, having adopted the airline policy and advocated for it very early on, argue against it in a grievance process. The APA arbitrarily and unlawfully adopted a position of authority and based every action on a decision made under that false authority.

The APA was not engaged in collective bargaining but rather in collective punishment. Every pilot who rejected covering the nose and mouth went through the grievance process and received a letter in their employee file threatening termination, no exceptions. The APA turned the representation process on its head for all pilots.

As discussed earlier, under the federal aviation rules and regulations, §61.53 gives the ultimate authority and obligation to the person about to operate an aircraft.

Contrary to the District Court's opinion, this evaluation is conducted by the pilot at all times, from the moment the pilot intends on operating an aircraft to the moment the aircraft comes to a complete stop.

The rule in §61.53 became the central point of contention and the cornerstone in the lower Court's ruling. Using its discretion, without providing any legal or lawful support, the Court opined that the Petitioner's

> ***"…interpretation of FAR §61.53 is idiosyncratic and almost certainly incorrect. That regulation provides, in relevant part;"***

that

> ***"…no person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command, or in any other capacity as a required crewmember while that person (1) Knows or has a reason to know of any medical condition that would make the person unable to meet the requirements for***

> ***the medical certificate necessary for the pilot operation…"***

and

> ***"…Nothing in this section even arguably gives Saliba the unilateral authority to decide…"***

The Petitioner believes the Court abused its discretion. While the Court's premise is almost certainly correct when applied to alcohol consumption, blood donation, or scuba diving for example, or any activity that would create a deficiency that has been identified[8] and addressed by the FAA, and the FAA did not regulate breathing restriction, it is well within the authority and obligation of the Petitioner to determine the practice is in violation of the medical standards; therefore, the more accurate premise is that the rule gives the pilot the **ultimate** authority in that determination.

The rule very clearly communicates that authority to the person who is to operate the aircraft and relies on the person's knowledge for that determination. There simply is no other choice, the person who is about to operate the aircraft must make that ultimate decision. It is incontrovertible that any decision that negatively affects the pilot's medical certification directly impacts the right to compensation; thus, it must be the pilot's decision.

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[8] It is impractical if not impossible for the FAA to identify all medications or activities including food consumption that would create a deficiency; therefore, the ultimate authority must be given to pilots with FAA guidance. Nevertheless, the pilot must comply with §61.53.

There is no conceivable way that the FAA could regulate every activity a person may be engaged in, even down to consuming a simple meal; therefore, and logically, it relies on the pilot to make such a determination. This is not limited to breathing restriction but applies to all or any future imposition or demands.

The Court missed the point entirely even after a very detailed explanation in the motion for reconsideration. It is worth repeating, contrary to the Court's opinion, compliance with the rule does not begin at the flight deck door. A pilot does not suddenly meet the medical standards at the flight deck door or is only obligated to meet the standard at that moment. The misunderstanding by the lower Court of aviation law and who is authorized to make such decisions turned to abuse of discretion by the Court following the motion for reconsideration which provided extensive education.

We can go a step further and conclude that, even if a practice is authorized by the FAA, and restricting breathing is not because it creates a deficiency, in combination, and in addition to the need for the risk versus benefit evaluation reserved for pilots respecting their right to compensation as discussed above, rules 14 CFR §§1.1 and 91.3 give the pilot administrative and ultimate authority in making that determination.

Not following the rule as written would spell the collapse of the medical certification process. An interpretation of the rule whether by the APA or the Court, may not usurp the pilot's authority as clearly stated below,

> ***"14 CFR §1.1…Administrator means the Federal Aviation Administrator or any***

> ***person to whom he has delegated his authority in the matter concerned."***

and

> ***"14 CFR §91.3 Responsibility and authority of the pilot in command. (a) The pilot in command of an aircraft is directly responsible for and is the final authority as to, the operation of that aircraft.***

A pilot medical condition is very much a part of aircraft operation, and "final authority" unequivocally means "ultimate" authority. The APA cannot supersede the authority of the pilot as it did in their determination and actions. Arguing in favor of the pilot's authority in §61.53 is the only, rational, and legally sound argument, anything else is interference in pilot authority and an attack on a pilot right. The APA and the lower Courts' opinions are in error.

The Court, without expert testimony or FAA interpretation, or even when it could not with certainty declare the Petitioner application of the rule is incorrect, while in contradiction, supported what it deemed a definitive, correct, and lawful APA position. The rules are not intended to allow anyone to interfere in the standard or deprive or interfere in the pilot authority.

The District Court also opined that AA's policy,

> ***"… was based on a scientific consensus that wearing masks helps reduce the transmission of COVID-19. Saliba might disagree with the science, but his disagreement does not make APA's***

> ***endorsement of American's mask policy arbitrary, discriminatory, or in bad faith."***

Quite the contrary. Operating aircraft is not done by consensus, otherwise there would not be authority vested in a Pilot in Command (PIC) and the FAA would have certainly regulated the practice for pilots based on the consensus of other agencies which is not supported by Congressional will as written in The Act.

The Act is clear in that respect in Title III, Sec. 301(a) where it states:

> ***"In the exercise of his duties and the discharge of his responsibilities under this Act, the Administrator shall not submit his decisions for the approval of, nor be bound by the decisions or recommendations of, any committee, board, or other organization created by Executive order."***

As stated above, the pilot has administrative power under §§1.1 and 91.3; therefore, the authority rests with the Petitioner. The opinion of the District Court is in contradiction to Congressional will and the federal rules, and it was an error to rely on it as the cornerstone in determining that the APA was within their mandate to negotiate based on their interpretation of §61.53. It is inconceivable that APA's adopted position is within the bounds of their mandate.

There simply was not a disagreement between the Petitioner and the Respondent as the Court opined. The APA exercised authority it does not have in interference with the exercise of authority by someone who does. This is a violation of aviation law, not a disagreement; thus,

the APA not only arbitrarily adopted a position supporting AA but also interfered in the Petitioner's duty and authority impairing his ability to claim a right created in The Act. The APA was no longer acting as an agent of the Petitioner.

In the response to a motion for reconsideration, the Court proclaimed the Petitioner was "quarrelling with the Court" and still, without providing the law in support of its ruling, denied the motion based on its own interpretation of §61.53 in support of the APA's purported wide range of reasonableness.

The Supreme Court and the RLA afford A pilot union protections giving it the latitude to negotiate. Not having the latitude or the wide range of reasonableness impairs the grievance process. However, the question that is present at all times is, how wide of a latitude does a pilot union get?

In this case, there is a right, a clear Public Policy, and authorities vested in pilots in the exercise of their duties. A pilot union is not party to and is not authorized to make any determinations that impair the right, authority, or duty of the pilot; therefore, the APA's position is well outside their mandate, is unreasonable, and irrational.

The APA created a crossroad of the RLA and The Act at the worst possible intersecting point, and by siding with the airline, it interfered in crewmember duties in violation of 14 CFR §91.11 and impaired its duty to be impartial or even fair and not discriminatory.

Lastly, interfering in crewmember duties is a serious offense. In *Adm'r v. Siegel* NTSB Order No. EA-

3804 (Feb. 10, 1993), 1993 WL 56200, the FAA successfully invoked 14 CFR §91.11 to assess a civil penalty against a pilot who walked up to a helicopter that was on the ground preparing for takeoff, reached into the helicopter and physically assaulted the pilot. The FAA continues,

> ***"...accordingly, the rule and prior FAA interpretation, as evidenced by the Siegel case, support a finding that an individual does not need to be on board the aircraft to violate §91.11."***

The APA needed not be on the aircraft to violate this rule when interfering in crewmember duties. An AA policy that interferes in pilot medical standards that is supported by the APA is interference in crewmember duties and a violation of §91.11 by the APA. A violation of §91.11 is an invasion of Public Policy by the APA and interference in the pilot authority which resulted in harm to the Petitioner when denied his right to compensation.

The APA has acted arbitrarily, discriminatorily, and well outside its mandate and failed to be fair. It interfered in pilot authority, it acted well outside the bounds of reasonableness, and attacked a right of the Petitioner resulting in the denial of that right.

———— ♦ ————

Original jurisdiction in the case under 28 U.S. Code 1331, federal question.

———— ♦ ————

REASONS FOR GRANTING THIS PETITION

This case is novel and of national prominence. It is about The Act and federal aviation rules and regulations that create obligations and authorities exercised by pilots and copilots. It is about securing the integrity of the process of FAA pilot medical certification which, if and when compromised, poses a great threat to safety of flight. This case is certainly not entirely about the Petitioner but is about a nation of laws.

There are several main reasons for this Court to grant this petition, all of which are rooted in the law, where aviation safety, which was noted 47 times in The Act, is the central theme.

REASON 1- RIGHT TO COMPENSATION

This case is about the APA directly attacking the Petitioner's right to compensation by interfering in his authority and impeding his ability to perform duties and obligations, and then sweeping their violation of his right and authority under the guise of the RLA grievance process to avoid the implication of their violation.

The right demands a risk versus benefit assessment that the APA is well outside its mandate to determine, or in that respect, develop any legal opinion impacting the right and authority. The APA admission in their smoking gun statement illustrates the indifference of the APA to the rights of the Petitioner.

Their actions speak even louder when adopting an AA policy that coerced and superseded the authority of

the Petitioner. The APA willfully and irrationally took steps to attack and violate the right of the Petitioner.

REASON 2- VIOLATION OF FEDERAL REGULATION

As discussed above, the APA violated federal regulations and interfered in the Petitioner's performance of duty. The violation itself is a matter for the FAA to pursue; however, without FAA authority to recover compensation as a result of the violation, the Petitioner is left with the only correct path, a private right to action.

Recognizing this fact, The Fifth Circuit Court in *Laughlin v. Riddle Aviation Co.,* 205 F.2d 948 (5th Cir. 1953) ruled that:

> ***"In prescribing rates of compensation to be paid to and received by pilots, Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it. The fact that the statute does not expressly provide a remedy is not fatal."***

Also

> ***"…As long as Marbury v. Madison…it is a general an indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded."***

And in *Peck v. Jenness,* it was recognized that*:*

> ***"A legal right without a remedy would be an anomaly in the law."***

While In *De Lima v. Bidwell*, it was said***:***

> ***"If there be an admitted wrong, the courts will look far to supply an adequate remedy."***

The interference by the Respondents cannot be addressed under the RLA, or by other agencies. A remedy in this case may not be found in the grievance process for violations by the Respondents or for the refusal to violate Public Policy by the Petitioner, it is a matter of law.

In *Norris v. Hawaiian*, citing *Maher*, 125 N.J.at 474, 593 A.2d at 760 the Hawaii Supreme Court ruled

> ***"[A]rbitration is a continuation of the collective bargaining process," and the arbitrator "ordinarily cannot consider public interest and does not determine violations of law or public policy."***

That puts us squarely in *Laughlin* where the court cited *T.& P. Ry. Co. v. Rigsby* stating

> ***"A disregard of the command of a statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied."***

The court went on

> ***"...The implications and intendments of a statute are as effective as the express provisions."***

Which leads right into the third reason.

REASON 3- A SPLIT IN THE APPELATE COURTS

The record shows a split in the appellate courts respecting private right to action under federal aviation law violation. The District Court and the Ninth Circuit, in a split with the Fifth Circuit, were steadfast in their opinion there is no private right to action under the Act. The Petitioner believes the Fifth Circuit ruling is as valid today as it was in 1953 and the lower courts are in error.

The Act gives the Petitioner an implied private right to action in this case to protect a right. A suppression of authority vested in pilots and copilots by the APA, the District Court, and the Ninth Circuit, concurrently with AA, while simultaneously denying the Petitioner remedy in all venues, is a threat to aviation safety and a denial of a right created in law.

REASON 4- INVADING PUBLIC POLICY

This case is about invading Public Policy negatively impacting the ability of pilots and copilots to comply with rules, regulations, and their legal obligations in the performance of their duties. This is a major threat to aviation safety. Congress understood the critical nature of aviation safety when writing the law. Accordingly, it made every effort to keep decisions affecting safety of flight unadulterated.

Title III, Sec. 301(b) of The Act dictates that the

"...Administrator shall have no pecuniary interest in or own any stock in or bonds of any aeronautical enterprise nor shall he

engage in any other business, vocation, or employment."

The Congressional intent here is clearly to eliminate any influence or interference, pecuniary in nature, in the Administrator's decision-making process that may adversely affect safety of flight.

In Title IV Sec. 401 (K)(1), The Act created rights for pilots and copilots, and further in §(K)(3) a provision ensured The Act does not impede their right to collective bargaining to improve such right.

(K)(1) "Every air carrier shall maintain rates of compensation, maximum hours and other working conditions and relations of all its pilots and copilots who are engaged in interstate air transportation…" and in K (3) "Nothing herein contained shall be construed as restricting the right of any such pilots and copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of pay of compensation or more favorable working conditions or relations."

A reasonable person can infer that Congress, by securing a right to compensation for pilots and copilots, and preserving their right to collective bargaining, intended on preventing influences and interference, such as incentivizing a medical procedure(s) or treatment(s), or coercion under threat of termination, to be accepted and complied with by pilots. Such actions violate informed consent and adversely impact the pilot decision-making process affecting safety of flight. As discussed, §§1.1 and

91.3 give a pilot administrator power; thus, Title III, Sec. 301(b) of The Act is as applicable to pilots.

What Congress did not foresee is an airline, in cooperation with a pilot union, using the coercive threat of losing a pilot and copilot Congress created right, as the stick to induce an action that violates the rule of law in contravention to their intent.

REASON 5- EXEEDING A MANDATE

This case is about a freely negotiating bargaining agent that strayed far beyond the bounds and protections afforded to it by this Court and the RLA that must be corralled within the boundaries of Congressional intent.

It's a case about the APA acting arbitrarily, discriminatorily, and in bad faith and failing their duty of fair representation. This case is ripe for the deployment of the justice system of the United States at its highest levels.

This case deals directly with two Public Policies that have the Congressional intent of keeping separate; The RLA and The Act, however, as a result of actions taken by the Respondent, converged at the most undesirable intersection, that of the FAA pilot medical certification standards, in which informed consent is bedrock, and authorities, and that of financial interests.

The Respondent's actions were well outside its mandate, have contravened Congressional intent, and attacked the Petitioner's right to compensation by interfering in his FAA medical certification standards in order to coerce a decision of violation. The result is the denial of his right to compensation by AA. Remedy for

such a violation must be found in a court of law and more accurately in The Act.

A remedy must not be denied or become illusive and a return to the intent in the law is required. A deep dive into the Congressional intent of the RLA and The Act will provide evidence that the Respondent exceeded authority vested in them under the RLA and violated the Petitioner's right and authorities vested in him in the law. By doing so, the Respondent exceeded its mandate and failed to represent the Petitioner fairly, in good faith, and without discrimination and must be held liable for damages to his right to compensation.

IN CONCLUSION

Rights created in The Act and authorities vested in pilots and copilots are the backbone of a system that has for decades provided a safe transportation system to the public. Interfering in pilot authority or denying a pilot a right in favor of achieving a corporate expedient financial recovery undermines safety in aviation in contradiction to Congressional intent.

Allowing a collective bargaining agent to operate openly and freely well outside their mandate in an invasion of Public Policy and the rights of pilots to accommodate the wishes of the corporation is a determent to safety and a violation of its mandate and the law. Where a right created is attacked, a remedy must be found.

The meaning of the words written in the law when passed do not change over time. Adopting such a drastic change in this case will create a hazard to aviation and continued subversion of pilot authority.

The Petitioner, an airline Captain with almost 40 years of experience, comes as pro se and respectfully asks the Court to issue a writ of certiorari.

——————— Oral argument requested. ———————

Respectfully submitted,

/s/ Bahig Saliba

Bahig Saliba
10824 East Santa Fe Trail
Scottsdale, Arizona 85262
(480) 235-0304

July 23, 2024

UNITED STATES COURT OF APPEALS APR 30 2024
MOLLY C. DWYER, CLERK
FOR THE NINTH CIRCUIT
U.S. COURT OF APPEALS

BAHIG SALIBA, Plaintiff-Appellant,
v.
ALLIED PILOTS ASSOCIATION, Defendant-Appellee.
No. 23-15631
D.C. No. 2:22-cv-01025-DLR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Douglas L. Rayes, District Judge, Presiding

Submitted April 22, 2024**

Before: CALLAHAN, LEE, and FORREST, Circuit Judges.

Bahig Saliba appeals pro se from the district court's judgment dismissing his federal action challenging Allied Pilots Association'sCOVID-19 policies and conduct during Saliba's workplace disciplinary process. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Saliba's request for oral argument, set forth in the reply brief, is denied.

Civil Procedure 12(b)(6). Puri v. Khalsa, 844 F.3d1152, 1157 (9th Cir. 2017). We affirm.

The district court properly dismissed Saliba's claims alleging that Allied Pilots Association violated its duty of fair representation because Saliba failed to allege facts sufficient to show that it acted arbitrarily, discriminatorily, or in bad faith. See Demetris v. Transp. Workers Union of Am., AFL-CIO, 862 F.3d 799, 804-05 (9th Cir. 2017) (explaining that a union breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith; and that a union's conduct will only be deemed arbitrary if "so far outside" a "wide range of reasonableness" that it is "wholly irrational" (citations and internal quotation marks omitted)).

The district court properly dismissed Saliba's remaining claims because Saliba failed to allege facts sufficient to state any plausible claim. See Pasadena Republican Club v. W. Justice Ctr., 985 F.3d1161, 1166-67 (9th Cir. 2021) (explaining that 42 U.S.C. § 1983 liability requires a defendant to act under color of state law, which is analyzed by "whether the defendant has exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law" (citation and internal quotation marks omitted)); Allen v. Gold Country Casino, 464 F.3d1044, 1048(9th Cir. 2006) (explaining that 18 U.S.C. § 242 does not give rise to private civil liability); G.S.

Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc., 958 F.2d 896, 902 (9th Cir. 1992) (explaining that there is no private right of action under the Federal Aviation

Act, "particularly where plaintiff's claim is grounded in the regulations rather than the statute itself").
The district court did not abuse its discretion in denying reconsideration because Saliba failed to establish a basis for such relief. See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1262-63(9th Cir. 1993) (setting forth standard of review and grounds for reconsideration).
AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bahig Saliba,

Plaintiff,

v.

Allied Pilots Association,

Defendant.
No. CV-22-01025-PHX-DLR

ORDER

The Court dismissed this action on March 27, 2023. (Doc. 17.) Plaintiff seeks reconsideration of that order. (Doc. 18.)
Motions for reconsideration should be granted only in rare circumstances. Defenders of Wildlife v. Browner, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). Mere disagreement with a previous order is an insufficient basis for reconsideration. See Leong v. Hilton Hotels Corp., 689 F. Supp. 1572, 1573 (D. Haw. 1988). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Such motions should not be used for the purpose of asking a court "'to rethink what the court had already thought through—rightly or wrongly.'" Defenders of Wildlife, 909 F. Supp.

at 1351 (quoting Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983)).
The Court has reviewed Plaintiff's motion and finds reconsideration is not warranted. Plaintiff does not identify any intervening change in controlling law, nor does he present any material information or argument that could not have been presented earlier with reasonable diligence. Instead, Plaintiff quarrels with the correctness of the Court's order and essentially asks that the Court re-think what it has already thought through. That is not the purpose of a motion for reconsideration.
IT IS ORDERED that Plaintiff's motion for reconsideration (Doc. 18) is DENIED.
Dated this 20th day of April, 2023.

Douglas L. Rayes

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bahig Saliba,
Plaintiff,
v.
Allied Pilots Association,
Defendant.

No. CV-22-01025-PHX-DLR

ORDER

At issue is Defendant Allied Pilots Association's ("APA") motion to dismiss Plaintiff Bahig Saliba's complaint (Doc. 9), which is fully briefed (Docs. 12, 15). For reasons explained below, APA's motion is granted, and this case is dismissed.

I. Background[9]

Saliba is a pilot employed by American Airlines ("American"). APA is the union that represents American's pilots. Though Saliba is not a member of the union, he is in a bargaining unit represented by APA.

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[9] The following background is based on the allegations in Saliba's complaint (Doc. 1) along with documents properly subject to judicial notice.

During the COVID-19 pandemic, American adopted a policy requiring passengers to wear masks during flights and requiring employees to wear masks while at work. Pilots were required to wear masks while facing passengers but were not required to wear a mask in the flight deck. APA supported American's mask policy and encouraged its pilots to comply.

American's internal mask policy was only one of many mask mandates that applied to air travelers during the pandemic. For example, Executive Order 13998 imposed a federal mask mandate for air travel. And the Federal Aviation Administration ("FAA") issued guidance mirroring the executive order.

On December 6, 2021, Saliba approached a Transportation Security Administration ("TSA") checkpoint without a mask. The TSA officer asked him to wear one, but he refused. The TSA officer contacted airport police, and Saliba told the officers that he was exempt from the mask mandate because, in his personal judgment, wearing a mask could compromise his fitness for duty. After a brief detention, Saliba was released, still not wearing a mask.

Airport police reported the incident to American, after which Saliba was removed from active flying duty and placed on administrative leave pending disciplinary action. On December 9, 2021, American informed Saliba that it was proposing disciplinary action against him. A hearing on that proposal was held on January 6, 2022. And in the month leading up to hearing, Saliba exchanged numerous emails with APA's in-house lawyer, Rupa Baskaran. Saliba insisted that APA both represent him at the hearing and argue his preferred defense, which was that Federal Aviation Regulation ("FAR") § 61.53 gave him unilateral authority to determine

whether to wear a mask. Ms. Baskaran explained to Saliba that APA will represent him at the hearing, if he so chooses, but APA would not advance Saliba's preferred defense because APA agreed with American's mask policy and disagreed with Saliba's idiosyncratic reading of FAR § 61.53. Ms. Baskaran also explained to Saliba that, if he does not affirmatively elect APA representation, he may represent himself at the hearing and advance whatever arguments he would like. Saliba never affirmatively elected APA representation

During the disciplinary hearing, Saliba was given an opportunity to, and in fact did, argue his FAR § 61.53 defense. He also acknowledged that, on December 6, 2021, he was not wearing a mask at the TSA checkpoint. Ultimately, a written advisory was placed into Saliba's personnel file regarding his failure to comply with American's mask policy. With
APA's assistance, Saliba filed a grievance challenging American's decision to issue a written advisory. Those administrative proceedings remain ongoing.

In the meantime, Saliba filed this action against APA, accusing it of violating its statutory duty of fair representation by not opposing American's mask policy and not advancing Saliba's preferred defense at this disciplinary hearing. Saliba also accuses APA of violating 18 U.S.C. § 242, which criminalizes certain deprivation of constitutional rights under color of state law, 42 U.S.C. § 1983, which provides civil remedies for the same, and 14 C.F.R. § 91.11, an FAA regulation that prohibits interference with an airplane crew member's performance of their duties. APA has moved to dismiss all claims.

II. **Legal Standard**

When analyzing a complaint for failure to state a claim to relief under Federal Rule of Civil Procedure 12(b)(6), the well-pled factual allegations are taken as true and construed in the light most favorable to the nonmoving party. Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual allegations are not entitled to the assumption of truth, Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009), and therefore are insufficient to defeat a motion to dismiss for failure to state a claim, In re Cutera Sec. Litig., 610 F.3d 1103, 1108 (9th Cir. 2010). Nor is the Court required to accept as true "allegations that contradict matters properly subject to judicial notice," or that merely are "unwarranted deductions of fact, or unreasonable inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). To avoid dismissal, the complaint must plead sufficient facts to state a claim to relief that is plausible on its face. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). This plausibility standard "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557).

III. **Analysis**

Saliba's claims under §§ 242, 1983, and 91.11 fail as a matter of law. Section 242 is a criminal statute that does not provide a private civil right of action. See Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006). Section 1983 provides a civil right of action, but

only against those acting under color of state law. APA is a union, and generally "[u]nions are not state actors; they are private actors." Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7, 570 F.3d 811, 815 (7th Cir. 2009). Although there are some limited circumstances under which the conduct of an otherwise private actor may be deemed state action, see Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003), none of those limited circumstances are present here. And the

Ninth Circuit has held that the FAA does not create an implied right of action. G.S. Rasmussen & Associates, Inc. v. Kalitta Flying Service, Inc., 958 F.2d 896, 902 (9th Cir. 1992) ("[W]e have previously held that there is no implied private right of action under the Federal Aviation Act. We reach the same conclusion . . . where plaintiff's claim is grounded in the regulations rather than the statute itself." (citation omitted)).

This leaves Saliba's duty-of-fair-representation claim. A union has a duty to fairly represent all employees within the bargaining unit. Demetris v. TWU, 862 F.3d 799, 804-05 (9th Cir. 2017). A union breaches this duty when it acts arbitrarily, discriminatorily, or in bad faith. Id. at 805. This standard is highly deferential to the union, especially when the challenged conduct involves a union's judgment. Id. This is so because unions must balance the interests of individuals and of the group as whole but pursuing every individual's goals would make it impossible to effectively pursue the broader goals of the entire group. Therefore, absent discrimination or bad faith, courts defer to a union's judgment because "[a union] must be able to focus on the needs of its whole membership without undue fear of lawsuits from individual members." Herring v. Delta Air Lines, Inc., 894 F.2d 1020, 1023 (9th Cir. 1990).

Here, it is implausible that APA acted arbitrarily, discriminatorily, or in bad faith when it refused to opposed American's mask policy or to advance Saliba's idiosyncratic view of FAA regulations. American's mask policy was generally consistent with those adopted by the federal government, as well as many state and local governments. It also was based on a scientific consensus that wearing masks helps reduce the transmission of COVID-19. Saliba might disagree with the science, but his disagreement does not make APA's endorsement of American's mask policy arbitrary, discriminatory, or in bad faith.

Likewise, it is implausible that APA's refusal to advance Saliba's preferred defense at his disciplinary hearing was arbitrary, discriminatory, or in bad faith. The two merely had a disagreement over the proper reading of the relevant FAA regulations. These types of differences of opinion are insufficient to support a breach of the duty of fair representation claims. See Conkle v. Jeong, 73 F.3d 909, 915-16 (9th Cir. 1995). This is especially true here, where Saliba's interpretation of FAR § 61.53 is idiosyncratic and almost certainly incorrect. That regulation provides, in relevant part:

> [N]o person who holds a medical certificate issued under part 67 of this chapter may act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person:
> (1) Knows or has reason to know of any medical condition that would make the person unable to meet the requirements for the medical certificate necessary for the pilot operation; or
> (2) Is taking medication or receiving other treatment for a medical condition that results in the person being unable to meet the

> requirements for the medical certificate necessary for the pilot operation.

14 C.F.R. § 61.53. Nothing in this section even arguably gives Saliba the unilateral authority to decide whether to comply with a mask mandate policy, especially when that policy did not require him to wear a mask while actually piloting the airplane from the flight deck.

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For these reasons,

IT IS ORDERED that APA's motion to dismiss (Doc. 9) is GRANTED. The Clerk is directed to terminate this action.

Dated this 27th day of March, 2023.

Douglas L. Rayes

United States District Judge

PUBLIC LAW 85-726-AUG. 23, 1958

AN ACT

To continue the Civil Aeronautics Board as an agency of the United States, to create a Federal Aviation Agency, to provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act, divided into titles and

sections according to the following table of contents, may be cited as the "Federal Aviation Act of 1958"

Title IV, Sec. 401 K

COMPLIANCE WITH LABOR LEGISTLATION

(K) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation withing the continental United States (not including Alaska) so as to conform with decision numbers 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air

transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Noting herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as use in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and hold a currently effective airman certificate authorizing him to serve as such pilot or copilot.

RAILWAY LABOR ACT

AN ACT to provide for the prompt disposition of disputes between carriers and their employees and for other purposes

SEC. 2. The purposes of the Act are:
(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein.
(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization.
(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act.
(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.
(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

APPENDIX E

SD1542-21-02 and SD1544-21-02

§F.

This SD exempts the following categories of persons from wearing masks:

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).[7]
3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

APPENDIX F

FEDERAL AVAITION REGUALTIONS

§1.1 General definitions

Administrator. means the Federal Aviation Administrator or any person to whom he has delegated his authority in the matter concerned.

§61.1 Applicability and definitions.

(a)(1) The requirements for issuing pilot, flight instructor, and ground instructor certificates and ratings; the conditions under which those certificates and rating are necessary; and the privileges and limitation of those certificates and ratings.

§67.1 Applicability.

This part prescribes the medical standards and certification procedures for issuing medical certificates for airmen and for remaining eligible for a medical certificate.

§91.1 Applicability.

(a) Except as provided in paragraphs (b), (c), (e), and (f) of this section and §§91.701 and 91.703, this part prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.

§117.1 Applicability.
This part prescribes flight and duty limitations and rest requirements for all flightcrew members and certificate holders conducting passenger operations under part 121 of this chapter.

§121.1 Applicability.
This part prescribes rules governing
The domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.
(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.
(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under subpart Y of this part, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an

Advanced Qualification Program under subpart Y of this part.

(d) Nonstop Commercial Air Tours conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter must comply with drug and alcohol requirements in §§ 121.455, 121.457, 121.458 and 121.459, and with the provisions of part 136, subpart A of this chapter by September 11, 2007. An operator who does not hold an air carrier certificate or an operating certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to the operator's principal base of operations to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

(g) This part also establishes requirements for operators to take actions to support the continued airworthiness of each aircraft.

APPENDIX G

18 U.S. Code § 1001 - Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1)
falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2)
makes any materially false, fictitious, or fraudulent statement or representation; or

(3)
makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

APPENDIX H

49 U.S.C. § 42112 - U.S. Code - Unannotated Title 49. Transportation § 42112. Labor requirements of air carriers

(a) Definitions.--In this section--

(1) "copilot" means an employee whose duties include assisting or relieving the pilot in manipulating anaircraft and who is qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a copilot.

(2) "pilot" means an employee who is--

(A) responsible for manipulating or who manipulates the flight controls of an aircraft when under way, including the landing and takeoff of an aircraft; and

(B) qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a pilot.

(b) Duties of air carriers.--An air carrier shall--

(1) maintain rates of compensation, maximum hours, and other working conditions and relations for its pilots and copilots who are providing interstate air transportation in the 48 contiguous States and the District of Columbia to conform with decision number 83, May 10, 1934, National Labor Board, notwithstanding any limitation in that decision on the period of its effectiveness;

(2) maintain rates of compensation for its pilots and copilots who are providing foreign air transportation or air transportation only in one territory or possession of the United States; and

(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et seq.) as long as it holds its certificate.

(c) Minimum annual rate of compensation.--A minimum annual rate under subsection (b)(2) of this section may not be less than the annual rate required to

be paid for comparable service to a pilot or copilot under subsection (b)(1) of this section.

(d) Collective bargaining.--This section does not prevent pilots or copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relations.

APPENDIX I

49 U.S.Code 114 (g)(2)

(g)National Emergency Responsibilities.—
(1)In general.—Subject to the direction and control of the Secretary of Homeland Security, theAdministrator, during a national emergency, shall have the following responsibilities:
(A)
To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).
(B)
To coordinate and oversee the transportation-related responsibilities of other departments and agencies of

the Federal Government other than the Department of Defense and the military departments.

(C)

To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D)

To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary of Homeland Security shall prescribe.

(2)Authority of other departments and agencies.—

The authority of the Administrator under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

APPENDIX J