UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Bahig Saliba
Appellant(s),

vs.
American Airlines, Inc.,
Chip Long, Timothy Raynor and
Alison Devereux-Naumann
Appellee(s).

9th Cir. Case No. 23-15249

District Court or
BAP Case No. CV-22-738-PHX-SPL

APPELLANT'S INFORMAL OPENING BRIEF

JURISDICTION. This information helps the court determine if it can review your case.

1. Timeliness of Appeal:

   a. What is the date of the judgment or order that you want this court to review? 01-30-2023

   b. Did you file any motion, other than for fees and costs, after the judgment was entered? Answer yes or no: No

   c. What date did you file your notice of appeal? 02-22-2023

FACTS. Include all facts that the court needs to know to decide your case.

2. What are the facts of your case?

This case turns almost entirely on whether an air carrier, in this case American Airlines, has authority under the law to dictate to pilots who hold a medical clearance, known as medical certificate, issued by the FAA under Public Policy, any medical treatment or demand any activity that causes a

medical deficiency in order to continue employment or be employed by the airline.

Additionally, whether the airline can supersede the pilot's authority in making health decisions or engage in a health maintenance program directly impacting the pilot's health, without having the lawful ability to execute contractual agreements with The People by making health statements on behalf of the pilots. Such contractual statements and agreements must be made by commercial pilots carrying passengers before reporting for duty and before commencing every flight leg.

Contractual Employment Agreement

The contractual employment agreement, Doc. 38, exhibit A, paragraph 9.157 Medical Certificates (a) states "It is each pilot's responsibility to maintain a current medical certificate appropriate for the crew position…" That is the actual contractual language in the manual of the airline which I signed and agreed to upon the commencement of my employment. In contrast, on page 8 of his order, Judge Logan selectively truncated that language to begin at "to maintain a current medical certificate…" He then interpreted and used it in formulating his opinion, decision, and order. Those are two sentences with two completely different meaning. Chip Long, also truncated language in company documents to project to the pilots the illusory threat of termination. Doc. 38, exhibit D. Thus, it is a fact that both Chip Long and Judge Logan truncated language to suit their objectives and project a certain conclusion or position. Words have meaning and carry consequences, which, as you will soon read, can sometimes be deadly.

"Safety" is written 43 times in the Federal Aviation Act of 1958 (The Act) and countless times in the Federal Aviation Regulations (FARs), as well as American Airlines (AA) manuals. Safety is no accident. At the pinnacle of the equation of safety are the pilots' skills and health. No matter the skill of the pilot if he is not healthy the equation fails. These are the pilots you trust and place your lives in the hands of when you board an airplane.

As a Captain, I the Appellant, take safety and maintaining my health extremely seriously. It is a contractual agreement with AA and every one of my

passengers and crew – The People. Since I am based in Phoenix, Arizona, the chances I carried a member of this Court or their loved ones from the San Francisco Airport are extremely high. I want you to know that I maintain my health on a 24/7 basis, and I will not waiver in my commitment. I don't subscribe to the notion that a pilot's health begins at the flight deck door, at the time of a physical examination or is under the authority of AA. The FAA, whose mission is safety, agrees with my position and supports it.

Article I, Section 10, Clause 1 of the Constitution. In addition to prohibiting states from enacting bills of attainder and ex post facto laws, the Constitution seeks to protect private rights from state interference by limiting the states' power to enact legislation that alters existing contract rights. The Constitution's Contract Clause provides: "No State shall…pass any…Law impairing the Obligation of Contracts." If there is Interference from the state, it must generally be reasonably designed and appropriately tailored to achieve a legitimate public purpose. (Such as in this case where a contract between a pilot and The People is subject to FAA rules and regulations or that an agreement between a pilot union and AA may not invade Public Policy) In this case and in line with my duty, I am executing contracts with every signature I affix to a document. I am free to execute such contracts in accordance with Public Policy and in line with the contractual language in the employment agreement. In addition, I may not be coerced or forced into contractual agreements in violation of the federal regulations and Public Policy. The above statements demand supporting language from this Court.

In accordance with 49 U.S. Code §114 (g)(2), the Transportation Security Administration (TSA) issued Security Directives (SD)1542-21-01 and 1544-21-01 (updated alpha-numerically) targeting airport and aircraft operators respectively. The SDs included an applicable and identical exemption for pilots in paragraph F3. This Court must agree that F3 language was specific and exempted pilots, not just any worker in a none-safety sensitive position, from facial covering while transiting airport terminals and while on duty for aircraft operators. The exemption follows the law and supports the fact that pilots' health and aviation safety are paramount, inseparable, and that pilots operating under federal regulations who must meet FAA medical standards at all times must be exempted. Executive Order 13998 stated that any policy developed must be "consistent with applicable laws." Pilot health standards are subject to federal law and Public Policy. Again, the health of a pilot and the safety of passengers do not begin at the flight deck door. Even though this fact was evident in exhibits supporting my argument, the lower Court completely

disregarded the existence of the F3 exemption and declared that AA may make internal policies respecting their pilots' health that violate these principles and the exemptions. I disagree.

AA and the defendants had other concerns - profits. In Doc. 30 exhibit #1 pages 19-20, Captain Tim Raynor explicitly states that, to bring people back on airplanes, I needed to set an example through virtue signaling by restricting my breathing. The discussion turned where I clearly stated that my obligations are towards the safety of my passengers first and not AA. I will not compromise safety and violate the FAA medical standards by intentionally creating a deficiency, no matter how minute, or accept any treatment with any known or advertised side effects, while intending on or am operating aircraft where lives are in the balance. In addition to safety, it is my constitutional right, legal and lawful obligation under contract with The People.

On page 13 of the same exhibit above, Raynor made clear AA's intention of keeping me from being at the controls if I did not comply with their unlawful policy that forces me to violate my medical certification standards. AA has stopped me from flying AA's aircraft since April 22, 2022, and lived up to their promise. AA has no lawful foundation under The Act to create a company policy that invades Public Policy, discipline me for adhering to the law, and further retaliate for refusing to violate FAA medical standards by restricting my breathing or by forcing me to accept a medical treatment of their choice. Every action taken by AA has been to keep me from flying any of AA's aircraft and enforce AA's unlawful policies. In addition, I have been receiving disparate treatment begining January 6, 2022.

Pilots and Health go together. A true event will illustrate to this Court how FAA regulation 14 CFR §61.53 applies, how personal it is, and how it relates to the facts in this case. Scott was once my co-pilot who on the descent into Phoenix declared he could not breath. While he assured me that he was not experiencing a heart attack, Scott, who was near incapacitation, went on crew oxygen and recovered after a few minutes. Scott removed himself from duty and a doctor, at a later time, determined that a heavy breakfast Scott consumed earlier before the flight origination, induced a heavy indigestion that prevented Scott from breathing. As trivial as a discussion of the effects of a simple breakfast may sound, a two-man crew flight deck was transformed into a one-man crew, increasing the risks and potentially the safe outcome of the flight in the event of any mechanical failure, or any emergencies that might have arisen. Armed with that information, Scott and only Scott, knows and has a reason to

know of a medical condition that would make him unable to meet FAA medical standards. Therefore, only Scott can determine the amount of food he consumes to remain in compliance.

The FAA has identified activities that pilots should not undertake or medications they should not use if planning on operating aircraft, some of which are scuba diving (FAA Airmen Information Manual (AIM) 8-1-2 (d)), blood donation (Aeromedical Guide) or alcohol consumption (Federal Aviation Regulations (FAR) 14 CFR §91.17). There are many over-the-counter drugs that are not authorized for use by pilots. These are all identified activities that have known future side effects on human physiology and are directly subject to FAA and pilot decision making. To be clear, the FAA does not prevent a pilot from engaging in these activities or using such drugs, however, if a pilot decides on an activity or a certain drug use, the pilot should not plan or intend on operating aircraft. To put it differently, a pilot should not engage in any activity or use any drugs that will cause future deficiencies, if intending on operating aircraft. This Court must recognize how critical the health of a pilot is.

All activities, whether identified or not, are subject to rule 14 CFR §61.53. The rule defers the decision to the pilot, and FAA documents refer to it frequently. For example, 14 CFR §61.53 is printed on a pilot's medical certificate, which must be in the pilot's possession, a reminder for the pilot to continually meet the FAA medical standards, and while it certainly calls for removing oneself from any flight duty if feeling ill, it is a planning tool. Only Scott knows the effects of a heavy breakfast. For Scott to fulfill his contractual obligations, complete his scheduled sequence of flights for AA, and maintain the standards of his medical clearance, should he consume a heavy breakfast prior to operating an aircraft for AA in the future?

Contrary to Judge Logan's conclusion that AA is not prevented from imposing a policy that Plaintiff personally believes affects his certification, only Scott can make that very personal decision when at the breakfast table at his hotel. Can AA create a policy that pilots are only allowed to consume certain meals and the amounts they consume? I am certain this Court agrees that AA may not. Pilots had already been exempted from face covering in compliance with federal regulations, but the District Court dismissed that fact, and AA punished pilots who followed exemption F3 in the SDs. Health and health maintenance is very personal, as I am also certain this Court will agree.

Rule §61.53 is masterfully written and covers anything and everything past, present, and future that may cause a pilot to not meet the standards of an FAA medical certificate, it gives the authority to the pilot, and the pilot must do his utmost to prevent any possible incapacitation, or any deficiencies, no matter how minute, affecting his health. Travelers on aircraft, including members of this Court, deserve nothing less than physically and mentally fit pilots.

AA and Judge Logan cannot assume responsibility by directing Scott's meal activity in accordance with their interpretation of §61.53 or the contractual language. Will they decide for Scott what to eat? That must give this Court a long pause. It is not Congress's intent for airlines to intervene in the health maintenance of pilots and co-pilots and there is no law in The Act giving air carriers that authority. The FAA has a non-intervention-based policy and has set the standards for pilots to meet, and airlines under 14 CFR 121.383 must only use FAA qualified pilots. It is very important to note that the FAA does not require any treatment of any pilot in order to meet the medical clearance standards.

The intent of the language in the FAA rule is clear, and if different than illustrated above, §61.53 would have been worded differently. Take for example, 14 CFR §107.17. Under §107.17, there are no medical standards or any contractual obligations of passenger carrying activity. It simply states in part that "…No person may manipulate the flight controls…if he or she knows or has reason to know that he or she ***has*** a physical or mental condition…" In comparison, §61.53 states "…knows or has reason to know ***of any medical condition that would make the person unable to meet the requirements for the medical certificate***…" A pilot does not have to be suffering from the condition, he has to plan his activity carefully so he would not create any known future adverse medical condition or deficiency affecting the standards of his FAA medical clearance, if he intends on operating aircraft, and further make health statements accordingly under penalty of law. If that is not the case, airlines will never get off the ground and doctors will have to be at every gate checking pilots before every departure. That is not the case and pilots must execute contractual agreements with The People before every flight.

To further illustrate, a pilot typically operates a sequence of flights over a several days period. The airline, bar any unforeseen medical condition, expects their pilots to maintain their health and be available to complete their sequence. The pilot has the responsibility to maintain his health. That is the

contractual language. After all, there is a schedule to keep and people to move safely. If pilots did not plan their fitness, flights will never be completed as scheduled.

For example, you are returning home on the last scheduled flight of the day. Your only pilots are preparing for their duty. One of the pilots did not get enough rest and he knows that if he reported for duty, he would not meet the health standards after 2 hours of the 4 hours flight. At the moment he is not tired, but he has a reason to know that in 2 hours he will be fatigued and not able to meet the medical standards. The pilot must use §61.53 in making his determination and remove himself from duty. 14 CFR Part 117 details duty limitations for pilots and addresses fatigue issues and future projections. (Fatigue is a medical condition) I experienced a situation similar to that on one of my assignments. After being on duty for almost 11 hours, AA assigned a flight from Phoenix to Miami. I felt fine when reporting for duty but because of a slight delay in the arrival of the aircraft I would be taking, I determined that by the time I arrive at Miami I would be fatigued. The only solution was to remove myself from duty. Future projection of the physical condition of a pilot is critical and this is one of the ways §61.53 instructs pilots to comply.

Same scenario. The pilots came in late the night before and all restaurants were closed. The next day, since it was a weekend, there was only one restaurant open for business. One of the pilots learned from other crew members that the food quality at that restaurant is substandard and that several pilots were sick hours after eating there once. Should the pilots eat at that restaurant any way and take a chance with 200 souls on board, or should they forego the idea and find something else that is more suitable. §61.53 would tell them that if they knew of the slightest possibility the food would sicken them, they should not consume it if they plan on operating an aircraft. The decision must be obvious.

The examples can be endless in the life of an airline pilot. §61.53 is applied constantly and a pilot must constantly evaluate his health decisions. Alternatively, according to the Court's interpretation, a pilot may just consume whatever he feels like, use any drug he feels like or conduct any activity and only when he does not meet the requisite conditions at the time of departure remove himself from duty. Airlines and schedules don't work that way and pilots must plan accordingly. Airlines expect their pilots to be ready and fit for duty at all times. It is the pilot's responsibility, and agreement and the law vest that authority and responsibility in the pilot.

As stated above, some activities have been identified, and under the doctrine of preventing future deficiencies while operating aircraft, caution is issued for certain activities not to be practiced and administrative action is taken against pilots who violate the standard. Everything else is left to the pilot's determination under authority vested in him by the FAA. The FAA has not vested that authority in the air carriers and the carriers do not face administrative action for pilot medical lapses.

Even the airlines play a role. Although it is not regulated, airlines have for decades adopted, for obvious reasons, the practice of serving their pilots two different type meals. Pilots' health is nothing to consider lightly. Even after the events of 9/11, pilots, including myself, who may have otherwise accepted gifts from passengers, such as chocolate or food or drinks of any kind, became very cautious not to accept anything from strangers. Healthy and alert pilots at the peak of their performance are the foundation of safety and using any drugs or restricting breathing is nothing to consider lightly.

Here are a few main reasons for all the talk about §61.53 and the medical certificate. 1) There is a standard set by the FAA that must be maintained by the pilot, not the airline. 2) It is the pilot's responsibility to maintain the standard. 3) It is Public Policy. 4) It is a right of United States Citizens to obtain a medical clearance in order to exercise their right to traverse the navigable airspace. 5) AA cannot create a new medical standard by which they operate under authorization given to them by the FAA. 6) Any administrative action taken by the FAA is taken against the pilot holding the medical certificate, not AA. 7) I have been complying with the regulation for the last 38 years without any violation and that more than qualifies my interpretation and understanding of the rule. 8) AA cannot lawfully make health statements on my behalf, and 9) Today's environment has given §61.53 a well-deserved appreciation and understanding.

It is important to note that a pilot certificate and the accompanying medical certificate that authorizes a pilot to operate aircraft are a right of United States Citizens and Public Policy. The Act affirms that in Section 104. Briefly stated, the power that resides with The People is vested in Congress to create the law, Congress passed The Act in 1958, The Act created the FAA, and the FAA granted the authority to pilots to operate aircraft in the navigable airspace, provided they meet the physical and mental standards set by the agency. That

is the law, and The People deserve nothing less. AA cannot interfere with the law.

As a member of the class, I enjoy exercising my right as a pilot. Passengers exercise their right by contracting with pilots. According to FAA statistics, there were slightly over 720 thousand pilots at the end of 2022 who held a medical certificate. I fly my own aircraft privately and any medical procedure that AA imposes invades my right and Public Policy. A mandatory medical treatment policy created by AA that is not regulated by the FAA is not confined to AA's operations, it affects everyone in the United States.

This case must not be construed as an employment matter by which AA believes to have full authority in dictating their own medical terms for employment or continued employment of pilots. It is a federal standard that AA must comply with, and the authority vested in pilots must be respected. AA does not have the authority to dictate medical standards and there is no aviation law supporting AA's position.

The authority granted to the pilot is Public Policy and pilots may not grant that authority over their health to any other person, entity, or corporation. Simply put, the responsibility falls squarely on the shoulders of pilots. 18 U.S Code §1001carries harsh penalties for making false statements related to a pilot fitness for duty or health declaration when applying for a physical examination, (FAA form 8500-8 / Approved OMB NO. 2120-0034 in the notice section) and AA pilots must also make that statement before every flight and of their own volition in accordance with 14 CFR §117.5.

At the risk of repeating myself, the terms that have been spelled out in the contractual language of the agreement made between the airline and myself back in 1997, give me the "responsibility" to maintain my medical certificate. AA is not in a lawful position to make health statements on my behalf or sign any contractual agreements respecting my physical and mental fitness to operate aircraft.

In Doc. 51 page 8, Judge Logan makes the following statement: "This argument is utterly baseless. The terms at issue merely bar Plaintiff from flying if he lacks the appropriate certification or is not in the requisite condition to do so. They do not prevent American from imposing a policy that Plaintiff personally believes affects his certification or ability to meet the medical or physical standards." I couldn't disagree more. Lacking the appropriate

certification is clear cut and, in my case, I must receive a medical clearance or medical certificate every six months. However, not being in the requisite condition and what AA can impose is what the Court misconstrued. Remaining in the requisite condition, as explained above, is the pilot's responsibility, is very personal and spelled out in the contractual language of the employment agreement. AA is violating the agreement by infringing on my responsibility and is invading Public Policy. Furthermore, AA has created a new medical standard which I will elaborate on a little later.

AA cannot have it both ways, impose a mandatory medical procedure without authority and in violation of the contractual language of the employment agreement and Public Policy, and demand a contractual fitness for duty statement by the pilot. AA is unable to lawfully assume any risk or make contractual agreements respecting the physical and mental fitness of a pilot.

The danger in allowing AA to dictate or demand a mandatory medical treatment opens the door for AA to demand future medical treatments at will. It is a slippery slope, and AA will naturally interfere in health decisions a pilot makes as their accounting spread sheets demand, and AA, a for profit corporation, will tailor the treatments pilots will be required to receive to boost their productivity at the expense of the pilots' health and safety. For example, when fatigue calls become frequent, AA will demand their pilots consume energy drinks to boost their productivity. Already, in certain training modules, AA instructs pilots on the use of something termed "Nappuccino", the practice of consuming a Cappuccino and immediately taking a nap for 20 minutes after which, a pilot would stay alert for hours. The need to maximizing the work group productivity has already been demonstrated today by AA's rationale for demanding medical treatments to ensure productivity of the work groups and reduce absences. AA does not have that authority and must only use FAA medically qualified and cleared pilots who meet the FAA medical standards, not AA medical standard. The Courts have a duty to protect the constitutional contractual rights of pilots and the American travelers.

AA may not impose any policy affecting or invading Public Policy. The FAA did not regulate or require any of AA's mandatory medical treatment or policies. The FAA simply stated that pilots "may" take certain medical treatment but must comply with §61.53. It must be clear to the Court that the FAA may authorize the use of a certain drug, but the authorization does not require pilots to use the drug, and pilots must follow the law, and the law is §61.53 and 14 CFR Part 67.

AA misconstrued the term "may" for "must." AA is operating outside their FAA issued operating certificate. (An operating certificate is the authorization given by the FAA that details specific operations an airline may conduct) What affects a pilot's health respecting medical certification is extremely personal and subject to the pilot's determination and informed consent. As I have illustrated above, §61.53 is Public Policy, very personal and written to address personal assessments pilots make of their medical condition, and such assessments must be made under their own volition and must not be subject to any coercion or enticement.

With all due respect, Judge Logan is incorrect by stating the terms of the agreement do not prevent American from imposing a policy that Plaintiff personally believes affects his certification or ability to meet the medical or physical standards because the rule, first and foremost, is directed at the pilot, is very personal, authorizes only the pilot to make those decisions and therefore responsible for the decisions he makes and the contractual agreements he signs. AA is not subject to FAA administrative action for any violation of the rule and therefore may not assume the pilot's contractual responsibility.

In his order, Judge Logan omits the term "responsibility" from the contractual language in the airline's manual and instead begins with the term "maintain." Then, he determines that the language does not bind AA and arrives at the conclusion that I failed to state a claim. Judge Logan could not be more incorrect in his judgment. The language in the manual is contractual, spells out each party's responsibility and that makes it binding on AA as much as on me. By the Court's affirmation, there is contractual language in the company manual, and it clearly states it is my responsibility to maintain my medical certificate standards. The language binds AA to non-interference in health decisions I make. What bars me from flying may be not being in the requisite condition or common sense, but what binds AA is their agreement it is my responsibility to maintain my health in order to meet the standards set by the FAA. The contractual language is legally and equally binding on AA as it is on me, and it reflects the law. After all responsibility without authority is slavery.

The FAA does not require any medical procedure of any pilot wishing to obtain a medical clearance. The simple and logical reason is because a medical clearance is a right and requiring any medical treatment is an invasion of medical autonomy, and further, because of the inability of the agency to

lawfully assume risks associated with any imposed medical treatment. AA is in a similar position. The FAA administrator stated unequivocally to Congress that the FAA will not regulate masking. Here is the link to that testimony https://www.youtube.com/watch?v=mYeNyLw71rYAA and a link to the story https://thehill.com/policy/transportation/aviation/503344-faa-says-it-wont-make-masks-on-planes-mandatory/, that means AA's policies were not regulated by the FAA, the agency with authority over airline operations, and AA was operating outside their approved operating certificate issued by the FAA. AA wants to require medical procedures but refuses and lawfully is unable to assume the risk and responsibility associated with such procedures.

I did meet AA halfway on January 6, 2022, and offered that I would do anything they asked me to do if they were able to show they have the authority over my medical certification, and would assume responsibility and the risk, sign my fitness for duty and flight release documents, (Flight Release document details specifics for a certain flight such as the amount of fuel, flight route etc.) which are contractual and required by the agency, but AA refused. Offer made and offer rejected. AA rejected because, legally, AA is unable to do so. You can find my offer in Doc. 30 exhibit #1 page 35. That should have been the end of the discussion, but AA persists unabated and continues to punish me and that is why I am here.

Against that backdrop and in November of 1997, I signed an agreement with America West Airlines, now American Airlines, stating in part, "It is each pilot's ***responsibility*** to maintain a current medical certificate…" Doc. 35 exhibit #2. My claim is that AA is in violation of my contractual agreement with the airline which has not changed over the years. My contractual obligations are not only with AA but also with The People I carry. AA's contractual obligation is their non-interference with health decision I make in the maintenance of and in my compliance with the medical standards and Public Policy. AA interferes in my health decisions without assuming the risk or responsibility, which as I stated, AA is lawfully and legally unable to assume.

The District Court identified the language in my employment agreement with the airline as contractual but declined to rule on the agreement. The Court claimed it is only binding on me and that AA can impose medical procedures. Again, I disagree and believe that such a ruling is not only incorrect and not grounded in law, but also irresponsible, dangerous and a threat to the health of aviators, aviation safety, and the United States of America.

Judge Logan's ruling blurs, if not entirely obliterates the fine line between the Judicial and Legislative branch of government by incorrectly defining what safety means under The Act and what Congress intended by The Act. He provides no law or case law supporting his interpretation, the Court's, or AA's position.

The contractual language assigns "…responsibility to maintain…" to the pilot. The dictionary defines responsibility as having an obligation to do something, or having control over or care for someone, as part of one's job or role and being the primary cause of something and so able to be blamed or credited for it, capable of being trusted or morally accountable for one's behavior. Blacks Law 6th edition defines it as: "The state of being answerable for an obligation, and includes judgement, skill, ability, and capacity. McFarland v. George, Mo. App., 316 S.W.2d 662, 667. The obligation to answer for an act done, and to repair or otherwise make restitution for an injury it may have caused." AA is not in a position to assume my responsibility.

Maintain means, cause, or enable (a condition or state of affairs) to continue, to keep (something) at the same level or rate, keep (a building, machine, or road) in good condition or in working order by checking or repairing it regularly, *and provide with necessities for life or existence*. A pilot doesn't magically meet the standards of an FAA medical examination on the day of the examination, or at the flight deck door, and he doesn't suddenly become responsible to do so. It requires diligent and informed consent decision making by the pilot and only the pilot. AA is not in a position to maintain my health.

Here, the district Court assigned no significance to the simple word "responsible", and by doing so deprived me of my constitutional rights to contract and the right to trial. By Judge Logan's incorrect interpretation, lack of understanding, or by design or omission of the term "responsible", he framed my claim to lack the foundation or the terms of a contractual agreement, and thus ruling that I have failed to state a claim. That is incorrect, and the Judge has a Constitutional obligation to preserve my right and further, and in consideration of the Public Policy Doctrine, he has the obligation to uphold the rule of law and carefully craft a ruling in favor of disallowing any infringement on Public Policy and my contractual rights.

AA wants to impose a mandatory medical procedure because it is financially advantageous but is lawfully unable to assume the risk and responsibility. AA must follow the law and Public Policy.

In addition to the contractual language in the employment agreement, 49 U.S. Code §42112 language is also contractual, and the carrier has a duty to abide by the code. §42112 also states the fact that carriers must use qualified pilots which brings us full circle to the very fundamental fact that AA cannot usurp the responsibility of the pilot in maintaining an FAA medical certificate and accept the risk and accountability, that is an impossible task for AA.

AA is constrained by the law. Under Title IV Sec. 401 (k)(1)(5) of The Act and 14 CFR §121.383 (a) (2) (i), AA must use qualified pilots who hold a valid FAA medical certificate and said certificate must be in their possession while exercising the privilege of their pilot certificate. A pilot certificate is only valid if accompanied by a medical certificate. I am one of thousands of pilots who are similarly situated. AA cannot escape their obligations by simply silencing me or terminating my employment for example. The fact that many pilots have succumbed to the threat of termination and did not stand on their rights and obligations, does not make law.

Defendant Long threatened AA pilots with termination if they did not accept AA demanded medical treatment. Doc. 35 exhibit #6. He intentionally truncated confusing company policy documents to project the threat of termination, when in reality there were other options, such as compliance with Public Policy. He used the threat of termination as a fear tactic to coerce pilots into accepting a medical treatment.

When members of this Court exercise their right to traverse the navigable airspace and board an aircraft, take the time to look into the flight deck and wonder, what did the pilots have for dinner the night before? What kind of medications did they use? What kind of medication were they demanded and forced to mandatorily use by their airline under threat of termination, and what kind of side effects do these medications have, and when would these side effects manifest? Did they get enough sleep? Did they spend the night in a hotel room where the windows did not open, and what quality air did they breathe? Think about what may affect their health as they prepare for flight. Then go to your seat and relax. Historically, you would be able to do so because, the FAA, the watchdog of aviation safety, has set the standards and vested the responsibility and authority in pilots to maintain their health, and

pilots, in general, take their health and safety very responsibly, except for the fact that AA and most of the airlines have set a new medical standard and your pilots may not be lawfully qualified. Again, more on that later.

At this moment I want to share with the Court the following true events that I and others believe resulted from the invasion of Public Policy and violation of contractual agreements that are the cause for action in this case. This information is public, but I personally know two of my colleagues who suffered as a result of the medical treatment demanded by AA. According to the widow of one captain, Wilburn Wolfe who was once my co-pilot, he suffered a severe reaction immediately after the treatment of the J&J product and expired 17 days later. Another captain, Bob Snow, suffered a heart attack six minutes after landing at DFW with over two hundred souls on board, coded three times and now lives with an implanted defibrillator. Captain Snow, who was on a news broadcast, credits his heart attack to the same medical treatment he was forced to accept. I have no reason to doubt the accuracy of these accounts. There are many more pilots who are losing the ability to maintain a medical certificate due to the medical treatment they were forced to receive at AA. The union representing the pilots at AA, The Allied Pilots Association (APA), now under new leadership, put out a graph showing a 300% increase in long term disability year over year for 2021 and 2022. Stories like these are cropping up day after day and pilot incapacitation is on the rise. My very first flight instructor who sent me on my very first solo flight in 1984 at the Oakland airport across the bay, now retired from Hawaiian Airlines in 2013, who by choice decided to receive the treatment, also suffered shortly after the second dose he received, and now he frequently visits his cardiologist for treatment for one of the advertised side effects of the drug. This is a real threat to the airline industry. This not only gives me a reason to know but also a reason for a very long pause. It is a very slippery slope to allow airlines to dictate health decisions to pilots specifically, but also to any of the other airline work groups.

AA has violated and continues to violate the contractual employment agreement I struck with the airline on November 3rd, 1997, whereby the contractual language states that I am “responsible to maintain” my FAA issued medical certificate. By imposing mandatory medical treatment and intentionally forcing medical deficiencies under threat of termination and in violation of Public Policy, and further imposing punishment for my refusal to accept an amendment to the contractual agreement, AA has violated the agreement by imposing unlawful discipline and placing me on administrative

leave on April 22, 2022, and on unpaid administrative leave since August 22, 2022. I am asking this Court to respectfully reverse the lower Court's ruling and find that, in mandating medical procedures, AA breached, not only the contractual employment agreement, but also Public Policy.

Aviation law violation and Private Right of Action

The lower Court ruled by relying on the Ninth Circuit's "unequivocal" position there is no private right of action for aviation law violations.

An invitation to analyze the case independently did not move the lower Court.

Law is alive, and findings in new cases create new opportunities and new case law. My argument, even if slightly disorganized, will demonstrate to this Court that, in this case, there must be an implied private right of action, a new path for this Court.

This case is not about a lost bag, or a delayed or canceled flight where someone missed an important meeting. This case is about the very foundation of aviation – safety and the authority of the pilot over health decisions he makes to meet federal medical standards - Public Policy. It is about serious violations of aviation law by AA.

The case is novel and demands a novel approach and analysis. Never in the history of aviation have airline pilots been demanded to mandatorily accept any medical procedure as a requirement for employment or continued employment, and the FAA has never been silent on the matter like today. There is no aviation law supporting airlines demanding pilots accept medical treatments and there is no remedy under The Act for such a violation.

In part, I will rely on Laughlin v. Riddle Aviation Inc., draw a parallel in a two-prong approach leading to one conclusion.

In Laughlin, the Fifth Circuit Court found an implied private right of action, reversed, and remanded the case for proceedings. That ruling leaves room for this Court to reverse.

First prong:

Congress never envisioned or expected air carriers to actively create specific mandatory policies that undermine aviation safety and invade Public Policy. Congress passed The Act that created the FAA which promotes safety by creating rules and regulations, many of which are the result of fatal aviation accidents. The FAA is the watchdog and the enforcer of any violation or infraction through administrative action.

There has been a relationship between the FAA and the airlines that fosters safety in aviation. I can attest to that through my 38 years in the aviation industry. What happened in this case is novel, extremely unorthodox and unexpected. The FAA did not actively move to promote safety first, only issued recommendations, and AA shifted its focus to financial solvency at the expense of passenger safety in the worst possible way. As stated, the FAA adopted a passive approach and did not regulate any of the airline's procedures.

Pilots are at the pinnacle of aviation safety. (Aircraft mechanics and flight attendants are as equally important in the aviation safety equation) AA invaded Public Policy and demanded mandatory medical treatments of its pilots and subjected passengers to aviation hazards as described in the complaint.

AA demanded their passengers sign contracts of carriage without the disclosure of the added risks associated with facial covering. I have detailed the risks to passengers in the complaint and will refrain from detailing all the risks again.

As detailed above, the FAA under former Administrator Captain Steven Dickson, did not regulate facial covering in aviation, nor does the FAA require any medical treatment for pilots. What does that mean for the pilots and the general public? It means that the FAA did not conduct any studies to determine the effects of facial covering on pilots who operate aircraft at high altitudes and on passengers. The FAA did not amend their data, or conduct any new studies, to determine the time of useful consciousness of crew and passengers in case of a rapid decompression while covering their nose and mouth, and their response time to don an oxygen mask. (A rapid decompression is when the cabin altitude goes from around 7500 feet to 39000 feet instantly where partial oxygen pressure cannot sustain life) AA had the option, without conducting

new studies or implementing new training and procedures, to operate at lower altitudes where emergency oxygen would not be required, such as flying at or below ten thousand feet. That would not have been economically viable. AA did not adjust their operations considering the added risk and continued to use the more economically desirable and much higher altitudes.

AA did not train any crewmembers on emergency procedures while wearing facial covering or had any approved training program to conduct such training in accordance with 14 CFR §121.417. Such training would have been costly. I can attest to the fact that I never received any such training. AA operated outside their operations specifications and required crew and passenger to cover their nose and mouth restricting their breathing. AA was willfully flying blind.

If it may be accurate to say that AA may have the right to demand masking for passengers, it is more accurate to say that AA had the obligation to implement procedures and training to mitigate the additional risks as a result of the practice, and AA did not. AA willfully demanded passengers sign agreements that run contrary to Public Policy and safety, without any disclosure of the associated risks of restricting ones breathing (The FAA that oversees airline operations did not regulate or enforce masking and turned a blind eye to the practice) and AA did not mitigate the added risks by implementing any new procedures, or training for crew and passengers.

The FAA did not conduct any studies to evaluate the side effects of any medical treatment such as restricting breathing for pilots. The FAA stated they would evaluate the effects of medical treatments on the pilot population and adjust as necessary. The recommendations were for all pilots whether they were airline pilots or general aviation pilots, they all operate under the same Public Policy. In and of itself, that statement deserves a very long pause and is an indication the FAA was, for all practical purposes, experimenting on the pilot population with newly introduced drugs.

Historically, such studies are required before issuing any new regulations involving human physiology or aircraft certification, and the FAA simply abdicated their safety practice and authority in aviation in favor of a politically correct and economically expeditious position for the airlines. (The airlines are the economic engine of the nation) For example, the FAA abandoned their historical practice of a mandatory one year waiting period after the final approval of medications for pilot use in favor of the Emergency Use

Authorization (EUA) drugs, however the FAA directed pilots to comply with §61.53 and maintain the standards of their medical certification. As stated above, this was a recommendation by the FAA, but pilots must follow laws and §61.63 is the law. The approval was for pilot use and not airline dictation of new airline policies. The question is then, how a pilot maintains the FAA medical standards and comply with §61.53 after using a drug under EUA with untimely manifested side effects. Side effects that manifest more than the 48 hours wait period the FAA recommends, and possibly weeks if not months, such as blood clotting, Myocarditis, or Pericarditis. Does the AA pilot wait until he is sick to make that determination, or does he plan ahead utilizing informed consent and not simply comply with forced medication under threat of termination?

Not to be misconstrued, that change, or approval was not an authorization for airlines to mandate any medical procedures. The guidance was directed at pilots, not airlines. It was simply an allowance for pilots who chose to receive a treatment to do so but were urged to follow the law. To be more specific, AA did not receive authorization from the FAA to enforce masking on pilots or dictate any other medical treatment, and the operating certificate of AA did not reflect any such authorization.

To characterize what AA was engaged in and what they demanded from their pilots, and still do, as a very bad episode of the Twilight Zone, is an understatement. It is out of this world.

In Laughlin, the Fifth Circuit stated, “A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit that statute was enacted, the right to recover the damages from the party in default is implied.” The implications and intendments of a statute are as effective as the express provisions.

There is no question that following the regulations is of utmost importance, for it is critical in a life-or-death situation directly affecting the pilot in command (PIC) and his passengers. There is no doubt I am the beneficiary of The Act and I pass the benefits to my passengers by operating safely and by following the rules, but what happens when the carrier forces a pilot to violate the rules? Especially when there is no remedy in The Act to correct the violation.

Safety is the goal and today's passengers take it for granted, and, as I have seen many times, passengers are upset if their pilots do not show up or are very excited when they do after a long delay, however, in my entire career I may have been asked only a handful of times how I was feeling. People expect their pilots to be fit and healthy, as they should, and I believe that is the image that is imprinted in people's perception. It should stay that way and forcing medical treatment on pilots does not keep it so.

The effects of what AA is engaged in.

49 U.S. Code §42112 states that, as a pilot, I am "providing" interstate air transportation. As a captain who provides transportation to The People at AA, although I can, I am not simply manipulating the controls of an aircraft to take it from point A to point B, or supervising my co-pilots do the same, I am providing a service, and as such, have legal contractual obligations and responsibilities under which I am personally liable.

14 CFR §91.3 states that as the PIC of an aircraft, I am directly responsible for, and the final authority as to, the operation of that aircraft. There is that "responsible" word again. Under 14 CFR §1.1 definitions, Administrator means the Federal Aviation Administrator or any person to whom he has delegated his authority in the matter concerned.

Together, §§91.3 and 1.1, give me the final authority and make me the administrator, and as such I have made determinations that AA violated several rules and regulations affecting safety of flight. Again, I have detailed these violations in my complaint. I not only come to this Court as a pilot, but also as an administrator. When I disclosed to AA my concerns, their response was of complete disregard, retaliatory and that of punishment. I have also informed the agency of my concerns and the only response I received from the FAA Aeromedical Chief, Susan Northrup, was a simple politically correct statement.

The cited laws above are intended on benefiting the PIC of an aircraft, privately and in commercial operations, they are not words that create a mere illusory right that is not enforceable.

Aviation business is complex, and the larger the operation, the more complex it becomes, and the more elusive safety becomes. An accident is a chain of events, it is seldom an isolated event. The failure of one link may

result in a calamity. All the rules and regulations are designed to avert a failure in the chain, and it is critical that the rules are followed. These rules and regulations are designed to "benefit" the PIC, and by default the passengers, in the safe outcome of a flight.

The dictionary defines benefit as an "advantage" or "profit" gained from something. Therefore, these rules and regulation are designed to 'advantage" the PIC. Logic would then dictate, that not following or intentionally violating the rules would "disadvantage" the PIC, and of course the safe outcome of a flight.

Pilots are not immune to personal liability and disadvantaging the PIC may result in financial hardship. The hardship may result from an event in which passengers are injured, or as in this case, by AA subjecting me to hardship for merely demanding AA comply with the law so as to not disadvantage me as the PIC and subject the passengers to unsafe conditions.

Congress intended on benefitting or advantaging the PIC and the public as a whole. To borrow words from the Fifth Circuit Court, when Congress passed The Act by which it affirmed the People's right to traverse the navigable airspace, Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it or protect it. A pilot has the right to contract with The People to provide safe transportation and AA has interfered in that right. The fact that the statute does not expressly provide a remedy should not be fatal here.

Second prong ties into pilot medical qualifications and certification.

As stated in The Act, Sec. 104, I am a member of a class who personally enjoys his right, and the rules and regulations are designed to support that right, while exercising it commercially and privately, and simultaneously protect The People. The AA created policy of demanding a medical treatment for pilots, is not confined to their operations and directly impacts me in the private, as well as it infringes on and impacts my right to contractual agreements with The People. Again, the regulators never envisioned a case like this, where a carrier imposes mandatory medical deficiencies or a medical treatment on pilots for employment or continued employment. Air carriers receive a privilege under the act and must comply with the terms imposed.

14 CFR §121.383 requires air carriers to use qualified pilots who have in their possession a valid FAA issued medical certificate. The pilot must meet FAA medical standards. Regardless of any other qualifications, all pilots must meet that requirement. It is the law, and it is Public Policy.

The FAA can only bring enforcement action relating to medical certificate violations or infractions against pilots. Thus, AA knows that under federal aviation regulations, it is in no jeopardy for AA to force pilots into accepting a medical procedure and potentially violate the standard.

AA simply found a loophole in the law and exploited it to create a second-tier medical standard that is not determined by or under FAA authorization. AA merely demanded a medical procedure, and under threat of termination, secured the consent of its pilots. Chip Long was very clear in his message, accept the treatment or get terminated. The majority of pilots at AA consented.

By demanding medical procedures and by securing the consent and compliance by the majority of the pilots, AA created a new medical standard and a new set of second-tier pilots who hold AA-modified or created medical certificate. AA has created a subset of qualified pilots who meet AA's definition of their newly established medical standards. AA is no longer complying with the FAA medical standard; they have their own.

Remember that the FAA only made recommendations when using the term "may" and AA used the term "must" misconstruing the law. Also, as I stated in my complaint, AA rewrote §61.53 in their manual giving it a narrow meaning that is more in line with 14 CFR §107.17, and as long as the pilots pass their FAA physical examination, which may not detect deficiencies created by AA's mandated medical treatments, they are issued a medical certificate and AA is in the clear, but only AA. The danger lurks in the process, and for a good reason, which I discuss below, that would allow deficiencies to slip through the pilot screening process.

The FAA was in no legal position to stop AA from demanding a medical treatment. Their position is simply that of examining pilots, and as stated above, the pilots have the authority by law to make health decisions, and if pilots pass an examination a medical clearance is issued. The pilots were hoodwinked and bamboozled into believing they had no authority rejecting the treatment, and the only other option was an accommodation request which then

imposed yet another medical treatment on the pilot. AA practiced deception and trickery to gain the pilots' consent.

There is however the matter of health statements made by the pilots which play a large part in the screening process. This is where this argument turns on the law and true Congress's intent. The process of application for such a physical examination requires a statement of health by the applicant - the pilot – on FAA form 8500-8. (The application for a medical examination) The statement must be truthful and by the applicant's own volition, and it is made under the pains of 18 U.S. Code §1001. This Court must ask, is a person who was threatened with termination, coerced, and provided with incentives (and they were in the thousands of dollars as the evidence shows) to consent to a medical treatment that is experimental in nature and under an EUA with known side effects, including death and heart complications, is making that statement truthfully and of their own volition? Was there informed consent? I do not believe so. A statement of health by the pilot is an integral part of the examination process and an untruthful statement may allow deficiencies to slip through the screening process. That is where AA aviation violation manifests, a violation with very serious consequences. AA was the invisible hand in the commission of the aviation violation. I believe that demanding a mandatory medical treatment is conducive to less than truthful statements on the part of the pilots, and that is where the danger lurks.

In between FAA medical examinations, a pilot must maintain the FAA medical standard. Accepting an EUA drug under threat of termination or restricting ones breathing, is not good health maintenance and is certainly not under one's own volition or informed consent, therefore, a statement of health made by the pilot under duress at any time and at the time of application for a medical examination cannot be truthful or accurate, and does not reflect the true knowledge of the applicant, especially when the advertised side effects of these drugs, such as Myocarditis and Pericarditis, and blood clotting, which can cause embolisms and heart attacks are known and may untimely manifest. The side effects are advertised on the product inserts. There was no informed consent, only the threat of termination by AA and Chip Long. Doc. 35 exhibit 6. It is worth mentioning again, the FAA only issued recommendation for the 720 thousand pilots who carry medical certificates, a recommendation is just that, and pilots must follow the law in §§61.53 and 1001.

Let's contend that tomorrow I am scheduled to receive my physical examination. Today, as I am walking, I am forced under threat to take a new

drug and was informed by the person forcing it on me, that it is safe and effective and that it is under recommendations by an agency. I am not of the opinion that I want to accept it and have reason to know of its serious side effects. I am forced to accept it or else I would not be able to continue on my path. Faced with the prospect of not being able to continue, I consent and am allowed through. The next day I walk into my Aeromedical Examiner's office and start filling my 8500-5 application. I have to make my health statement and sign under pains of 18 U.S. Code §1001. (I must also declare if on any medications) Knowing that the day before, under threat, I received a novel drug I know very little about, know nothing about how it is affecting my health, but know of some serious side effects of the drug, and knowing that I might lose my medical clearance if I declare yesterday's actions, should I include the fact I received a treatment under duress by accepting a drug that I know has serious side effects on my application? Is my health statement true and correct and am I in violation of §1001? The answer should be clear and as intended under the law, a declaration must be made. It is imperative that, especially in commercial operations where hundreds of lives are in the balance, such statements are true and correct.

AA cannot claim they did not know about blood clotting for example. When I asked, Long refused to clarify how AA can state a product is acceptable when the FAA had put it on hold. (The exchange is in the email and the appeal hearing document) The FAA placed the J&J product on hold on 4/19/2021 because of blood clotting reports in Europe. Knowing the side effects and making the statement of health on the FAA physical examination application by someone who received a drug or medical treatment under Chip Long's threat of termination, are incompatible and may render a certificate of health and any fitness for duty statements unlawful. The same condition applies to any drug used under duress or threat of termination. Medical standards are not intended to only be met on the day of examination or just at the flight deck door. The People deserve reasonable assurances that pilots meet the standards set by the FAA at all times, and it is the law. We seem to forget that, and just board airplanes as if it all happens magically.

Since AA cannot sign the physical examination application or sign the contractual fitness for duty statements, AA relied on the pilots who consented on making these statements. AA was not only forcing the pilots to accept medical treatments, but also, make what may be inaccurate statements on their physical examination application and every time they signed a fitness for duty statement. The alternative was termination.

As argued above, AA may not create a new medical standard of their own to employ or continue the employment of pilots, they must use FAA qualified pilots and a true statement of health by the pilot is imperative.

AA exploited that loophole by making their demand an employment matter when it is a Public Policy matter under the Federal Aviation Regulations. By exploiting that loophole, AA created a subset of pilots who may not meet the standards of the FAA medical clearance but do meet AA's unlawful standard.

Again, by creating and enforcing their new medical standard, AA is sidestepping the requirement of 14 CFR §121.383 and is in violation of the rule. Because of my rejection of their created standard and my disagreement with the premise that AA can create a new medical standard or impose deficiencies, AA is disadvantaging me and in retaliation, is keeping me on indefinite unpaid leave, depriving me of my contractual rights and demanding a fitness for duty examination without cause.

In sum, AA must use FAA medically cleared pilots who meet the FAA medical standards, not AA's. The FAA cannot and does not require any medical treatment for pilots and AA struck out on their own. An FAA medical clearance is Public Policy and a right, and only pilots can make health decisions affecting their medical clearance, and subsequently make the health statements required by law. Administrative action for violations of medical standards can only be taken against pilots, therefore AA is not subject to such action and there is no remedy in aviation law for forced medical treatments by air carriers. By forcing pilots to accept medical treatment under threat of termination, and without informed consent, AA successfully created their new medical standard which included accepting drugs with known and published severe side effects, including heart conditions such as Myocarditis and Pericarditis and potential untimely death, sidelining Public Policy. AA must use pilots who meet the FAA and Public Policy standards not AA's standards and as such AA is in violation of the law. AA relies on pilots passing their medical examinations and if they don't, they will simply hire more pilots. Pilots must make contractual health statements as required by law and AA cannot make such statements on behalf of the pilots.

There is no stated right of action or remedy under The Act for forced medical treatment, but that should not be fatal. I am the beneficiary of The Act

and as the beneficiary I must find remedy. This is a novel situation we find ourselves in, a situation that heavily lends itself to an implied private right of action and that leaves me with the only means for remedy - the Courts. There simply is not a mechanism for such a violation instrumentally perpetrated by AA, therefore, the only place for remedy is the Court and an implied private right of action under aviation law violation is appropriate.

As I stated, the FAA, the agency that enforces medical standard, does not require any treatment, and is not authorized to pursue individuals or corporations who force a treatment; therefore, I must find remedy in other forums, and in this case the Courts.

For simply complying with FAA regulations and exercising authority over health decisions I make in compliance with 14 CFR §61.53 and 14 CFR Part 67, AA continues its retaliation. By demanding AA follow the regulations respecting passenger safety to advantage the PIC, and by following FAA established medical standards and refusing to accept AA's created standard, AA has subjected me to disciplinary actions, placed me on administrative leave since April 22, 2022, and demanded a fitness for duty examination, and placed me on unpaid leave since August 22, 2022. AA does not have, nor did they provide any reason for their actions other than their authoritarian approach in forcing compliance.

Under 49 U.S. Code §42112 (b) (1), Duties of Air Carriers, AA shall maintain rates of compensation for its pilots and copilots who are providing interstate air transportation. AA has maintained zero compensation since August 22, 2022, and continues to do so in violation of §42112. To borrow the words of the Fifth Circuit again, in prescribing carrier duties to maintain 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. The evidence will show that AA retaliated against me for refusing their demand to create medical deficiencies or accept any medical procedures, and in retaliation, demanded a fitness for duty on April 22, 2022. In the words of the APA lawyer Tricia Kennedy, AA has weaponized a joint collective bargaining agreement (JCBA) in retaliation for my position of disagreement with AA. AA continues the weaponization of the JCBA today.

Considering the argument above, this Court must find an implied private right of action for AA's violation of aviation law to recover from AA what I am entitled to under the employment agreement.

UNDER COLOR OF LAW

We are a nation of laws and, as I have stated above, AA must follow the law. I was following the law on December 6, 2021. I had signed my contractual agreement with The People who were about to board their flight to Dallas Fort Worth, DFW airport under my command. I was on duty making my way to my aircraft.

The TSA officer did not follow the law and refused to comply with exemption F3. The police officers did not follow the law, detained me for 10 to 15 minutes, refused to reason with me or listen to my presentment of the law or follow F3 exemption, and attempted to force me to violate the standards of my FAA medical certificate but failed. I was the only person following the law. AA wanted an on-time departure and communicated that to the police, who then relented in favor of an on-time departure for AA and allowed me through without covering my nose and mouth.

AA did not act upon my arrival in DFW because the police were called, Doc. 19 Michell Montgomery declaration, but rather because the police called AA. The incident occurred in the security area and if the police did not call AA immediately and followed up the next day with emails, AA may have never acted against me. The police did not only notify the AA agent on duty of the event and followed up with emails to company security personnel overseeing the Phoenix pilot hub, but they also pressed and gave instructions to AA on how to request copies of their report which identified me as Middle Eastern in the race box. (Middle Eastern is not a race) The police even gave AA their work schedule and when they would be back on duty and available to further assist them in their investigation. The police action was not a mere notification but that of pressing AA for further action.

The Court has adopted the "If it were not for" argument, and if it were not for the police notifying AA of an event that had nothing to do with AA, I may not be in Court today.

The District Court ruled that conducting an internal AA disciplinary process is hardly acting under color of law. This Court must agree from the above discussion, there was no law or a lawful process for AA to impose a disciplinary action against me. I was targeted and disciplined for merely following the F3 exemption and the regulations that govern my medical standards and contractual agreements with The People. AA acted on the behest of the police. It is certainly implausible that the Court would sanction an internal disciplinary action that violates FAA federal rules and regulations.

As discussed above, and the Court must take notice, that AA created an unlawful policy that superseded the FAA and the rule of law. AA and the defendants conducted an unlawful disciplinary hearing and imposed penalties against me. AA and the police acted unlawfully under the color of law for financial reasons. To be exact $23.012.421.00 in the case of the Spokane International Airport and untold amounts in the case of AA, under the CARES Act recovery funding. A condition of continued funding was the enforcement of facial covering.

The fact that pilots were exempted did not matter and AA, as discussed above, wanted me to visually restrict my breathing by covering my nose and mouth. The simple message is, if the captain of your flight covers his nose and mouth, you should too. Of course, the part passengers were not told was that it was not a federal violation to not comply, and that if they did not, the federal money would dry up and AA would not be selling airline tickets that carry added undisclosed aviation hazard.

AA created a policy that was in line with the narrative of a political and financial position that was in violation of the exemption, not 'In accordance with applicable law" and designed to create a persuasive message to passengers and crew delivered by the pilots.

This Court recognizes four different criteria or tests to evaluate whether a private actor has engaged in "significant" state action, and satisfaction of any one the criteria is sufficient to find state action by a private actor. Lee v. Katz, 276 F.3d. 550, at 554 (9th Cir. 2002)

Public function. AA acted in a manner that is traditionally a public agency or governmental function. The narrative adopted by all government and public agencies was that of the need to cover the nose and mouth. AA is a private company, and well before the TSA issued their SD's, AA created a

policy that forced everyone and pilots to cover their breathing apparatus. Later, and in many respects, AA aligned with the governmental and public agencies policies with the exception of paragraph F3 exemption for pilots. The government took a page from AA's playbook, however, recognizing the legality and the authority of pilots over their medical certificates, F3 exemption was inserted. AA did not honor the exemption inside or outside the flight deck. AA required pilots restrict their breathing on the flight deck when flight attendants entered during pilot visits to the lavatory. I have detailed that policy in my complaint and the risks it carried.

As applied to pilots, AA continued the public function role in violation of the pilot's authority over their medical certificate. Playing that role and, in their effort to force passengers to comply, AA modified their contract of carriage to include an agreement with passengers to cover their nose and mouth without disclosing the added risks of doing so. AA projected their public function image, and in support of police efforts to force the restriction of my breathing in terminals, subjected me to an unlawful disciplinary process they assured the police will be used against me. Doc. 30 exhibit #1

Joint action. 49 CFR §1544.235 Training and Knowledge. The police at the Spokane airport terminal were trained on TSA SDs 1544 and 1542 in accordance with §1544.235. They were aware of the fact the SDs contained an exemption in paragraph F3. In addition to F3 exemption, the guidance contained in the TSA SD was for police to ask the individual to cover the nose and mouth and if they refused, they were to be escorted out of the terminal building. The police did not follow F3 or escort me out of the building, they allowed me through because AA wanted an on-time departure. That was stated by Ray Crownhart, the commuting AA pilot going to DFW who knew Tony, the AA gate agent on duty that morning. Tony told Ray that the reason I was allowed to proceed to the gate without face covering was because he told the police that he wanted an on-time departure. I was ready to leave the building. A very symbiotic relationship existed between AA and the police.

That did not stop the police from forcing me to violate my medical standards and my constitutional contractual rights with The People and other constitutional rights as well. The police acted jointly with AA, and AA acted willfully to subject me to an unlawful disciplinary process. Again, Doc. 30 exhibit 1, page 6, Raynor assured the police AA will handle this. To be exact, "…American Airlines said we will take this, he is our pilot, we will handle this Section – we call it a Section 21 process, but we will work through the

disciplinary process on the American Airlines side." Also, on pages 27-28 of the exhibit Raynor declared AA and the police are partners and that they work with them. AA did not just make a mere statement, they arrived at an agreement with the police to jointly act against me. Their actions were intertwined. You scratch my back, and I will scratch yours, kind of relationship. We give you an on-time departure and you will discipline this pilot on the AA side, we are not going to do it on our side. AA and the police conspired against me. They had a meeting of the minds, an agreement of sort, for an on-time departure, AA would punish me using an unlawful internal disciplinary process. The police and AA interfered in my constitutional right to contract with The People. The decision of the police to let me continue without restricting my breathing was not based on independent judgement. The police carried a favor for AA - an on-time departure.

The actions by the police and AA were inextricably intertwined. Both AA and the police stood to lose federal funding if they did not enforce the facial covering on pilots just as much as all passengers. AA and the police don't even need to communicate that fact, it is mutually understood, they both arrived at similar agreements with the federal government to receive the CARES Act money. A pilot walking in a terminal building and on aircraft who follows the rule of law and the SDs without covering his breathing apparatus is problematic to both AA and the police and a threat to their federal funding, the one interest shared by both. Shy of physically being present in Phoenix, the actions taken by the police were as substantial as they can be, and the bulk of the work was done by AA through the unlawful disciplinary process which continues today.

AA and the police interfered in my constitutional contractual rights with The People. Every statement I make and sign in the discharge of my duty is contractual, and by interfering in my right to an FAA issued medical certificate, the foundation for my ability to contract with The People, AA violated my constitutional rights. Together, AA and the police coordinated the effort to exact punishment and shape the outcome that favors their politically and financially driven position. Receiving benefits and complying with federal government unlawful demands was the common core motivation for AA and the police.

Compelling AA. AA needed very little compelling. As stated by Raynor, AA and the police are partners. In emails to AA, the police pressed AA to request the police report and provided a specific time when the police would be in a position to assist with more information. This was not a simple reporting

of the event to AA, which the police had no business doing, it was an overt effort to make certain AA takes further steps in exacting a punishment against me. Neither the police nor AA were acting in accordance with the law. There is no lawful or legitimate reason for AA to create a policy that restricts a pilot's breathing while on duty and subjecting me to a disciplinary action is unlawful. AA needed very little to no compelling in acting in concert with the police.

So, was there a close nexus? As close as it gets, shy of the police coming to Phoenix to conduct the disciplinary hearing themselves. The police were assured by AA there will be disciplinary action against me. AA and the police had a covert symbiotic relationship, they both benefited from the CARES act federal monies and forcing everyone, including pilots, to comply assured both the flow of funding.

In violation of the authority vested in me by the FAA, AA, in cooperation with the Spokane police, acted as a state agent to enforce an unlawful act. By doing so, AA deprived me of my constitutional rights to contract with The People under the law. AA, and the police, benefited from their coordinated action by securing and ensuring that federal funding would continue through masking enforcement on every individual regardless of the exemptions available. The police and AA projected the power of the State. Successful disciplinary action against me by AA assured the Spokane police of my compliance on my next transit through the airport. A benefit for the police and Spokane airport.

The airport is public property, AA leases sections of the airport. Any enforcement by AA on Spokane property in violation of F3 and my right to contract is also a benefit for the police and further strengthens the symbiotic relationship between the police and AA. My unlawful detention by the police and the entire process that I was subjected to by AA was seamless, and the objectives of the police and AA were indistinguishable.

The above reasons present to this Court enough evidence to find that AA acted under color of law and deprived me of my constitutional rights and right to contract with The People and violated my right under The Act.

HOSTILE WORK ENVIORNMENT

On January 6, 2022, during the disciplinary hearing, I experienced a disparate treatment. While I was being disciplined, Captain Raynor who conducted the hearing, refused to discipline other pilots who did not cover their nose and mouth, even after I brought to his attention the fact that there were six other pilots in uniform who are not complying with AA's created policy. Doc. 30, exhibit 1, page 39. Alternatively, you can find first officer David Maher sworn declaration in case CV-23-00140-PHX-SPL, Doc. 14 exhibit #1. David Maher was a witness to the hearing on January 6, 2022.

I started my application process for a Phoenix Chief Pilot position on March 8, 2022. After having technical difficulties during the process, I forwarded documentations and a cover letter to Tim Raynor, the director of flight, informing him of my interest in the position. Tim forwarded my request to HR and informed me that someone will contact me to further assist in the application process. No one from HR contacted me and the position was filled. I was not even afforded the process of application.

On April 14, 2022, I notified my supervisors and HR personnel that I felt discriminated against and informed them that I experienced discrimination in the past with the airline, the EEOC found that the airline discriminated against me and that we arrived at an agreement. (I believed the airline must have the agreement on file) I asked everyone on the email to take action to investigate and correct. To date, AA has not taken any action to investigate any of my discrimination claims. I have taken legal action against AA for material breach of the settlement contract agreement signed on March 9, 2005, between America West Airlines and the SALIBAs. AA inherits the contract terms under the agreement and has failed to perform in accordance with the terms.

On April 22, 2022, AA demanded a fitness for duty examination without cause. (The collective bargaining agreement requires a reason to be given in writing) From December 6, 2021, until April 22, 2022, I had not flown, worked, or interacted with any other employees. The only interaction was with management personnel during which I expressed my disagreements with their demands and claimed discrimination. AA has no foundation for demanding a fitness for duty examination.

October 27, 2022, HR, Jeanette Gibbs, notified me of her intent to commence an investigation into my discrimination claim following another disciplinary hearing on November 2, 2022. Still, the investigation has not commenced as promised. In some delay tactic, AA was attempting to secure some concessions through the union without ever contacting me directly. A discrimination claim must be investigated promptly under the law and AA is not interested in investigating any claims.

In a recent development, AA scheduled yet another disciplinary hearing for March 26, 2023. As before, HR is predicating my discrimination claim investigation on the completion of the scheduled disciplinary hearing. AA has had since April 14, 2022, to commence an investigation into my discrimination claim and they have not. That is more than a year and AA has not even asked me why and how I feel discriminated against.

It has been over a year and AA has not asked about my concerns of discrimination. On December 6, 2021, AA placed me on administrative leave, and again, on April 22, 2022, and demanded a fitness for duty examination without cause. On August 22, 2022, AA placed me on unpaid administrative leave without pay following a sick call and issued yet another disciplinary hearing letter to investigate why I did not keep an appointment a day after my sick call. AA then waited close to 60 days to schedule the hearing for which they added possible sick abuse to the investigation.

I have asked the managers to answer many questions and none of my questions have been answered. I feel like I am being treated like a second-class citizen at AA because I am a man of Middle Eastern descent. It has been nothing but one letter of discipline after the other while I am on unpaid leave. It has been since December 6, 2021, that I operated any flight for AA, and I believe it is because a man of Middle Eastern descent is standing up for his right and refusing to bend the rules and violate the Federal Aviation Regulations. AA has created a very hostile work environment and blurred a defining line between discrimination and retaliation for my refusal to accept their created unlawful medical standards.

PROCEEDINGS BEFORE THE DISTRICT COURT OR THE BAP. In this section, we ask you about what happened before you filed your notice of appeal with this court.

3. What did you ask the district court or the BAP to do—for example, did you ask the court to award money damages, issue an injunction, or provide some other type of relief?

I asked the court for my immediate reinstatement as an Airbus A-320 captain at AA. Expunge my employee record of any reference of insubordination or violation of any company policy. Enjoin AA from demanding any medical treatment as a requirement for continued or future employment by AA. Replenish my accrued sick bank hours and award compensatory damages calculated at the time to be $250.000,00 plus 16% in contribution to the retirement fund. Find AA in violation of §1983 and award punitive damages in the amount of $33.300.000,00 or higher, and grant any attorney fees if hired and any other equitable relief the court finds just.

What legal claim or claims did you raise in the district court or at the BAP?

Violation of the employment contract agreement terms related to providing a valid FAA medical certificate and AA's violation of said term by imposing medical treatment in any form.

Aviation law violations by AA.

Creation of a hostile work environment.

§1983 claim, AA acting under color of law and violating constitutional rights.

4. **Exhaustion of Administrative Remedies.** For prisoners, did you use up all administrative remedies for each claim before you filed your complaint in the district court? If you did not, please tell us why.

PROCEEDINGS BEFORE THE COURT OF APPEALS. In this section, we ask you about issues related to this case before the court of appeals and any previous cases you have had in this court.

5. What issues are you asking the court to review in this case? What do you think the district court or the BAP did wrong?

I am asking the Court to review the law the district court relied on to formulate their decision to dismiss the case. A good and thorough review of the January 6, 2022, hearing conducted by Tim Raynor should paint a good picture of the case and the rights and obligations of the pilot, and where AA's lawful limitations and violations reside.

I am asking this Court to review the determination made by the lower court relating to the agreement made between AA and myself respecting my authority over health decisions I make that directly affect my FAA issued medical certificate under Public Policy. I believe the court misinterpreted the contractual language of the company manual.

Also, review AA's authority in creating a new medical standard for all their pilots and how it relates to a pilot's legal and lawful obligations under federal aviation regulations. I claimed aviation law violations and the court

relied completely on this Court's position regarding private right of action, so I believe this is something this Court has to review and decide.

Review my §1983 claim. I believe the district court determination that AA's internal disciplinary policy and actions against me were lawful and are completely separate than the Spokane police action is incorrect. AA's action against me was without any lawful foundation and it is therefore only in coordination with and continuation of the police action.

Also, I believe there is enough evidence to show AA's actions were also driven by my national origin and discrimination against me began very early on during the disciplinary process on January 22, 2022. I am asking the court to also review the evidence related to my claim.

6. Did you present all issues listed in Question 6 to the district court or the BAP? Answer yes or no: ____yes_____

If not, why not?

7. What law supports these issues on appeal? (You may refer to cases and statutes, but you are not required to do so.)

I have cited many of the laws supporting my argument above as well as in my complaint.

Other Pending Cases. Do you have any other cases pending in the court of appeals? If so, give the name and docket number of each case.
NO

8. **Previous Cases.** Have you filed any previous cases that the court of appeals has decided? If so, give the name and docket number of each case.
NO

Bahig Saliba

Name	Signature
	April 24, 2023
Address	Date