13--1140

CASE NO. ----

PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 46110, 5 U.S.C. §§ 702-706, and Rule 15(a) of the Federal Rules of Appellate Procedure, Airlines for America, the Regional Airline Association, and Air Line Pilots Association, International-trade associations and a union whose members include airlines, air cargo carriers, and pilots-hereby petition this Court for review of the Federal Aviation Administration ("FAA") and Department of Transportation ("DOT")' s capacity reduction plan implementing furloughs of air traffic controllers and other measures uniformly across air traffic facilities, as a result of an erroneous interpretation of the requirements of the Budget Control Act of 2011, Public Law No. 112-25, 125 Stat. 240. The capacity reduction plan requires a blanket 10% cut in hours across the board, with no consideration of the impacts on the travelling public or the air transportation system. Rather, the plan has the effect of creating the maximum disruption for travelers because its effects will, by the FAA's own admission, be felt the greatest at some of the largest, most frequently travelled airports. This plan, in essence, will unnecessarily cause one out of three passengers to be delayed every day, and make every day in the air traffic management system twice as delayed as the single worst day last year, in terms of flight delays. Should these delays occur as FAA has said, it will have a direct ripple effect on passengers and shippers. Simply stated, passengers will opt not to fly to avoid inconvenience, less cargo will ship and jobs will be lost, all as a result of a needless furlough plan.

In its briefing, FAA stated that it would implement automatic ground delay programs on April 21, 20 13. It further stated that it would implement ground
delays regardless of conditions on the ground. At the time of the filing, FAA has
still not details to Petitioners and the public, and has instead orally presented key
elements to public stakeholders, including Petitioners, for the first time a mere five
days before it is scheduled to take effect, and have denied requests to provide full
details of the plan in writing. Petitioners and their members have not received any
meaningful information from the FAA on how the furloughs required under the
capacity reduction plan will impact air traffic schedules, and the FAA has apparently done no such analysis. Nonetheless, the Plan is, to some extent, reflected in (a) a presentation by FAA on April 16, 2013 and accompanying briefing paper, (b) the Testimony on April 16, 2013, of Administrator Huerta before the United States Senate Committee on Commerce, Science and Transportation, and (c) the furlough decision letters reportedly issued on April 10,
2013. The April 16, 2013 briefing paper and two versions of the written Testimony are submitted as Attachments A, B, and C respectively, to this Petition.[1]

One version of the April 16, 2013 testimony is posted on the FAA's website. See http://www .faa. gov /news/testimony /news_ story. cfm ?newsid= 14 514. A
second version of the April 16, 2013 testimony is posted on the website for the
Senate Committee on Commerce, Science, and Transportation. See http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=4171322f-8181-
4ccb-94 fc-e5b5b 1 fO 1 Oce.

A transcript of the entire April 16, 2013 Committee hearing, including Administrator Huerta's remarks, is submitted as Attachment D.
What FAA has publicly represented about its capacity reduction plan

demonstrates that, rather than faithfully apply its statutory mandate while complying with the Budget Control Act, Respondents have adopted a course of action that will harm airline passengers and shippers, the air transportation industry, the traveling public, and interstate and international commerce based on a false legal premise-that Congress has required the precise cuts that Respondents have ordered. However, the Budget Control Act does nothing of the sort. Because the FAA erred in assuming that the Budget Control Act mandates the capacity reduction plan, the FAA's decision must be vacated and remanded so that the agency may properly comply with the statute and adopt a program that is lawful and avoids severe disruptions of the air transportation system.

The FAA's statutory mandate includes fundamental responsibilities to preserve "the public right of freedom of transit through the navigable airspace" and to "develop plans and policy for the use of the navigable airspace ... to ensure the safety of aircraft and the efficient use of airspace." See 49 U.S. C. §§ 40101(c)(2), 40103(c) ("Federal Aviation Act"). Air traffic control-a government monopoly in the United States-is a vital element of the air traffic system that directly

controls and regulates the ability of the nation's airlines to operate, affecting the number and timing of flights, flight performance, and flight costs.

Following the sequestration directed by the President on March 1, 20 13 pursuant to the Budget Control Act of 2011, with a 5% spending reduction in certain non-exempt budget accounts, the FAA and DOT have now chosen to implement ground delay programs, apparently including furloughs of air traffic controllers, uniformly across air traffic facilities, starting on Sunday, April 21, 2013. By contrast, a well-planned, carefully-analyzed, non-uniform approach to air traffic management that still meets the required spending reductions would minimize system-wide delays and "ensure the safety of aircraft and the efficient use of airspace" because staffing reductions harm capacity at some airports more than at other airports. See 49 U.S.C. §§ 40101(c)(2), 40103(c).

The capacity reduction plan does none of these things. Indeed, an indiscriminate, across-the-board 10% furlough does not necessarily drop an airport's air traffic capacity by 10%. For example, the FAA has indicated that a 1 0% reduction in staffing results in reduced arrivals per hour of 21% at Newark, 36% at Chicago O'Hare, and 40% at Los Angeles. Moreover, staffing reductions at the largest, busiest airports are particularly damaging because they have systemwide ripple effects. Although the FAA has the ability and responsibility to

implement spending reductions in a manner that minimizes harm to the public and the air transportation system, the FAA has failed to do so.

As noted above, Respondents' only proffered rationale for furloughing air traffic controllers uniformly across facilities-without consideration for how cuts could be better designed to protect freedom of transit, airspace efficiency, and safety of the air traffic system, and without any economic analysis comparing different approaches to cuts-is that the Budget Control Act sequestration leaves no discretion whatsoever for strategic cuts that minimize harm to the national air transportation system. The FAA Administrator has said sequestration must be applied "by program, project, and activity within the various accounts within the FAA's budget" and must be applied uniformly to all facilities. However, that premise-that the sequester requires furloughing air traffic controllers at all facilities in a mindless, across-the-board manner, without consideration of the consequences and without room for minimizing impacts by making choices within certain large dollar budget accounts-is incorrect under sections 1 0 1-1 04 of the Budget Control Act and 2 U.S.C. §§ 900-922. It is also inconsistent with the FAA's statutory obligation to operate the air traffic control system in a responsible and efficient manner, see 49 U.S.C. §§ 40101(c)(2), 40103(c). The capacity reduction plan ordered by the FAA and DOT flows from an erroneous statutory interpretation, and, as such, cannot be sustained.

The unnecessary air traffic impacts expected to result from the FAA and DOT capacity reduction plan are significant. The FAA has suggested that the scheme will potentially delay approximately 6, 700 flights every day, which is more than twice the greatest number of delays experienced on the worst systemwide delay day in 2012. (The FAA reported that during 2012 the highest volume of delays on any single day was 2,994 flights, largely related to serious weather impact.) In particular, the FAA has said the capacity reduction plan will produce substantial increased delays at eight major airports: Chicago O'Hare (ORD), Fort Lauderdale/Hollywood (FLL), John F. Kennedy (JFK), LaGuardia (LGA), Los Angeles (LAX), Minneapolis-St. Paul (MSP),[2] Newark Liberty (EWR), and San Diego (SAN). This includes some of the busiest airports in the United States, impacting the largest number of travelers, with necessary ripple effects on travel that will certainly be system wide at other airports as well. The FAA anticipates that six other major airports may also be expected to experience increased

delays.[3]
The FAA has further represented that the scale of delays under the plan will force
an extension of airline schedules into the late evening or early morning hours
unless carriers cancel scheduled flights.

2 Subsequently FAA orally indicated that Minneapolis-St. Paul may not remain on
that list.

3 Philadelphia (PHL), Charlotte/Douglas (CLT), Hartsfield-Jackson Atlanta (ATL),
Miami (MIA), Chicago Midway (MDW), and San Francisco (SFO).

Against this backdrop, it is notable that the FAA has previously handled
similar sequestration cuts without resorting to extreme controller furloughs like the
ones it has now ordered to achieve a 5% spending reduction. In 1986, Congress
imposed a sequestration under the statute popularly known as the Gramm-Rudman-Hollings Act, 2 U.S.C. § 900 et seq. That sequestration required a budget
cut of 4.3%, which was accomplished without freezing hires of air traffic
controllers, much less furloughs. [4]
The FAA and DOT have provided little insight into why the FAA's
resources, even after making cuts required by sequestration, cannot still adequately
support air traffic control operations at major airports. DOT's budget in FY 2012
was approximately $70.1 billion, of which the FAA accounted for $15.9 billion of
budget authority. Within the FAA's own FY 2012 budget, the Operations account,
which includes air traffic control, had approximately $9.653 billion of budget
authority in FY 2012. At the time of the President's sequestration order, the Office
of Management and Budget reported that the Budget Control Act required FAA
spending reductions of $637 million, with the FAA saying $360 million of that
must come from within the Operations account. But as recently as FY 2007, when
air traffic levels were higher than today and the controller workforce was smaller,

the FAA operated with a lower budget of $14.696 billion, including $8.374 billion

[4] See FAA Plans for Reduced Fiscal 1986 Budget, Aviation Week & Space Technology at 16 (Jan. 13, 1986), Attachment E.

of budget authority for Operations. In other words, the FAA in FY 2007 managed its entire Operations account-without furloughs, with fewer controllers, and with greater air traffic volume-despite having a smaller budget than what it will have in FY 2013 even after making sequester-related cuts.

Despite repeated attempts by Congress to obtain information about the FAA's plans to implement cuts, there has been no response from the FAA. Moreover, although the Budget Control Act became law in August 2011, the FAA apparently did not plan how to manage spending levels until nearly two years later, after President Obama implemented the sequester by order on March 1, 20 13. Six weeks later, the FAA has still failed to provide transparency into the details of its capacity reduction plan; while it has revealed that the FAA will direct reduced operations at key major airports, airlines have been given little notice and no information concrete enough to start developing responses, such as changing flight and staffing schedules-changes which take months, not days or even weeks, as airlines set schedules and sell tickets six months in advance or more. Nor have Petitioners or their members been provided underlying data or the methodology employed by the FAA to predict the negative consequences of furloughs at the many affected airports despite requests from Petitioners. According to FAA personnel in briefings, the agency as of April 16, 2013, has not yet even coordinated its plans with other government agencies with responsibilities for

airports, including the Transportation Security Administration and U.S. Customs
and Border Protection.
The capacity reduction plan is not consistent with what DOT and FAA officials had previously stated was their goal: to implement sequestration in a
manner that would have as little impact as possible on the fewest number of travelers. To the contrary, because it is premised on an incorrect reading of the
Budget Control Act, the capacity reduction plan will impose unnecessary, widespread delays that harm airlines, passengers, shippers, businesses, and the
national economy-to which the aviation industry contributes $1.3 trillion. In fact,
the FAA's own analysis demonstrates that its approach will cause the greatest
harm at the largest airports impacting the most travelers, with ripple effects throughout the entire air transportation system. If the FAA's forecast delays are
accurate, one out of three passengers will be delayed every day. Further, by the
FAA's own projections, delays annually cost airlines and their customers in actual
costs and lost productivity $31 billion annually-before any FAA-imposed sequester delays, which would presumably double that number. Respondents have
denied Petitioners' request to avoid or delay implementation of the scheduled furloughs under the capacity reduction plan, and have stated that they will institute
this plan starting on April 21, 2013-a mere five days after revealing the plan to

Petitioners. Given the impacts the FAA says it anticipates, Petitioners are compelled to seek emergency relief from this Court pending further review.
In sum, by misreading the Budget Control Act to eliminate all discretion, the FAA and DOT's capacity reduction plan exacerbates sequester-related disruption

rather than minimizing it. But the law does not require these extreme actions, and Respondents cannot use the Budget Control Act to shield themselves from accountability. When injurious agency action is premised on complying with a law that does not in fact require such improvident action, it cannot be sustained.

Accordingly, these Petitioners-trade organizations whose members and affiliates transport more than 90% of U.S. airline passenger and cargo traffic, and the largest airline pilots union with more than 50,000 pilot members-bring this Petition for Review to challenge the capacity reduction plan as premised on an erroneous interpretation of law and subject to review by this Court under the Transportation Act and the Administrative Procedure Act.

This Petition requests that the Court instruct the FAA and DOT that their legal interpretation is inconsistent with the Budget Control Act and that the capacity reduction plan is not required by law. The Court, thus, should vacate the capacity reduction plan and remand to the agencies with instructions to instead reasonably and responsibly exercise their statutory discretion, consistent with the public interest, in accordance with the law.

Dated: April 19, 20 13

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Air Transport Association of America, Inc., d.b.a. Airlines for America ("A4A"), Regional Airline Association ("RAA"), and the Air Line Pilots Association, International ("ALP A") submit the following as their Corporate Disclosure Statements.

A4A's members are Alaska Airlines, Inc.; American Airlines, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; United Parcel Service Co.; and US Airways, Inc. A4A is a District of Columbia corporation with its principal place of business in the District of Columbia. A4A has no parent corporation, does not issue stock, and no publicly held company controls more than 10% of A4A. The fundamental purpose of A4A is to foster a business and regulatory environment that ensures safe and secure air transportation and enables U.S. airlines to flourish, stimulating economic growth locally, nationally and internationally.

RAA's members include 28 different regional commercial passenger airlines from across the United States: Aerolitoral, Air Wisconsin Airlines Corp, AirNet Systems Inc., American Eagle Airlines, Cape Air, Chautauqua Airlines, CommutAir, Compass Airlines, Empire Airlines, Era Aviation, ExpressJet, GoJet,

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