

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LEWIS J. TETLOW |  
16 Steppingstone Road |  
Bedford, New Hampshire 03110 |

and |

RICHARD C. MORGAN |  
2003 Spottswood Road |  
Charlottesville, Virginia 22903 |

and |

JOSEPH G. LEVECHIO |  
2564 Woodview Drive |  
Lancaster, PA 17601 |

Petitioners |

v. | Case No.

MARION C. BLAKELY, Administrator |  
Federal Aviation Administration |  
800 Independence Avenue, S.W. |  
Washington, D.C. 20591 |

Respondent |

PETITION FOR WRIT OF MANDAMUS OR  
ORDER IN THE NATURE OF MANDAMUS

Petitioners Lewis J. Tetlow, III, Richard Morgan and Joseph G. Levechio hereby petition for an order under the All Writs Act, 28 U.S.C. § 1651(a), directing the Administrator of the Federal Aviation Administration to issue a decision on each Respondents pending request for an exemption from a regulation forbidding him from flying as a pilot for his employer after his sixtieth birthday. Respondents seek expedited consideration for reasons as will be more fully set out in a memorandum to be filed separately. The bases for this petition are as follows.

1. Petitioners Lewis J. Tetlow III, Richard Morgan and Joseph G. LoVecchio each hold an "airman's certificate" issued by Respondent Federal Aviation Administration and are currently employed as pilots for USAir, a United States domestic commercial air carrier. They each have decades of flying experience, are certified to and, in fact, fly the most sophisticated commercial aircraft, and are veterans of the United States Armed Services.

2. Petitioner Tetlow will be 60 years old on April 2, 2007. Petitioner Morgan will be 60 years old on May 21, 2007. Petitioner LoVecchio will be 60 years old on January 30, 2008.

3. Domestic air carriers must have a certificate from the

Federal Aviation Administration (FAA).

4. The FAA administrator may promulgate regulations he or she finds necessary for safety in air commerce and national security. 49 U.S.C. §44701(a)(5).

5. A regulation issued by the administrator under 49 U.S.C. § 44701(a)(5) provides that no air carrier may use the services of a pilot if that person has reached his 60th birthday, and that no person may serve as a pilot if that person has reached his 60th birthday. 14 C.F.R. § 121.383c). This is referred to as the 'Age 60 Rule.'

6. The administrator is authorized to grant exemptions from the age 60 rule. 49 U.S.C. § 44701(f).

7. Review of orders granting or denying exemptions under 49 U.S.C. §44701(f) is in the Court of Appeals. 49 U.S.C. § 46110(a).

8. Petitioners have each filed a request for an exemption; none of which have been acted upon.

9. On Friday, March 23, 2007, Petitioners Tetlow and Morgan (and others) met with the Deputy Associate Administrator and other ranking officials of Respondent FAA. The FAA by its Deputy Associate Administrator informed them (1) that in the usual course of business waiver applications are acted on within 120 days of receipt; (2) changes to 14 C.F.R. §121.383 are under consideration; (3) no action on waiver applications would be taken "piecemeal" because of the regulation may be changed; and (4) it would be September before the FAA is likely to finish its internal consideration of changes to 14 C.F.R. §121.383 and months thereafter before a rule change, if any, would occur.

10. The Administrative Procedure Act at 5 U.S.C. §558c) requires that actions must be taken "within a reasonable time".

11. It is unreasonable to withhold action on Petitioners applications for waivers until changes to 14 C.F.R. §121.383, if any, are made.

12. It is likely that the request for exemption will be granted or, if denied, it would be overturned by this court, because:

(a) there is no scientific basis for that pilots over the age of 60 are unfit to fly commercial aircraft;

(b) foreign commercial air carriers are permitted to fly within the United States with pilots over the age of 60;

(c) the age limit facially violates the Age Discrimination in Employment Act, 29 U.S.C. §621, et seq.

13. The Respondent FAA's intentional failure to act on the waiver applications threatens Petitioners with irreparable harm. Once employment is terminated because waivers have not been granted Petitioners employer will have no obligation to rehire them.

WHEREFORE, petition requests this court to expedite consideration of this Petition and order Respondent to act on Petitioner's exemption request before April 30, 2007.

Respectfully submitted,

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