No. 24-2477
(case consolidated with No. 24-2503)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF CULVER CITY, CALIFORNIA, a chartered municipal corporation,

Petitioner,

v.

UNITED STATES DEPARTMENT OF TRANSPORTATION; PETE BUTTIGIEG, Secretary of Transportation; FEDERAL AVIATION ADMINISTRATION; MICHAEL WHITAKER, Administrator, Federal Aviation Administration,

Respondents

On Petition for Review of Actions by the Federal Aviation Administration

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REPLY BRIEF OF PETITIONER CITY OF CULVER CITY

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INTRODUCTION

Once again, Federal Aviation Administration ("FAA") relies on a chimera to support its position. At the outset, it was the illusion that a legitimate environmental review of the amended North Downwind Arrivals (the "Flight Procedures" or "Arrivals Procedures"), the only project at issue in this litigation, was in a document found in the desk drawer of a recently separated employee. Now, FAA contends that no "changes" to altitude have occurred, and therefore no change in noise impact over the City of Culver City ("Petitioner"), merely because the demonstrable altitude changes have been labeled as "restrictions." This is a distinction without difference. Moreover, FAA's claim that these "restrictions" are not "changes" is flatly contradicted by FAA's own recently submitted "Rhea Declaration" that correctly calls out that FAA has made changes to the Arrival Procedures.

Most notably, FAA makes the specious claim that Petitioner has no Standing to challenge the 2018 Flight Procedures' changes at issue here because Petitioner has suffered no damage from the disputed changes. In making that argument, FAA ignores Petitioner's indisputable proof of flight path altitude changes and resulting noise as well as exacerbated impacts on Environmental Justice throughout the community.

Finally, not only has Petitioner's Standing been confirmed repeatedly by this Court, but the repeated necessity to use this Court to vindicate its claims

demonstrates conclusively the existence of a "continuing controversy," as needed to confirm Petitioner's entitlement to its requested relief.

For all the reasons above, and further discussed below, FAA should be required to redress the injuries to Petitioner's community by performing a complete and comprehensive environmental review of the impacts of the Flight Procedures, and operations should be sent back to their prior configuration – a configuration that FAA has always claimed to be "safe and efficient" – pending completion and approval of the revised and expanded environmental review.

RESPONSE

I. THE PETITION FOR REVIEW SHOULD NOT BE DISMISSED BECAUSE PETITIONER HAS STANDING AND TIMELY FILED ITS CLAIM.

FAA's argument that Petitioner lacks standing for want of injury or that Petitioner merely seeks to relitigate *Vaughn v. FAA*, 756 F. App'x 8 (D.C. Cir. 2028), should be dismissed. This Court in *City of Los Angeles v. Dickson*, No. 19-71581 (9th Cir. July 8, 2021), has already dispensed with the issue that Petitioner has Standing because it has suffered an injury when the Court determined that FAA acted in an "arbitrary and capricious manner" and failed to permit Petitioner and other "Cities" the opportunity to "participate in the process and object to the FAA's findings." Additionally, this Court determined in *Dickson* that

Petitioner's claims are not untimely or merely an attempt to relitigate *Vaughn*, 756 F. App'x 8 (D.C. Cir. 2028) but had merits due to the controversy FAA created when it made changes to the Flight Procedures. FAA's arguments on both these issues were rejected in *Dickerson*, and this Court should reject the argument again here. *Dickson*, No. 19-71581 (9th Cir. July 8, 2021).

A. Petitioner's complaint is timely filed to address FAA's changes to Flight Procedures.

Petitioner agrees with FAA that Petitioner timely made a petition for review of the Project. *See* FAA Br. 31. Petitioner also filed a petition in a timely manner challenging the 2018 amendments to the flight procedures, which resulted in this court decision in *Dickson*, No. 19-71581 (9th Cir. July 8, 2021). A decision that mandated that FAA conduct a proper environmental review. Petitioner, again, has had to make another timely filing when FAA thumbed its nose at this Court's decision requiring FAA to conduct a proper environmental study, but instead came back with a CATEX – the equivalent of saying FAA does not need to do an environmental study.

Moreover, Petitioner is unequivocally challenging the 2018 amendments to the Flight Procedures. FAA's argument that Petitioner is blending the orders together is a gross mischaracterization of Petitioner's complaint. FAA even acknowledges that "Culver City . . . addresses the changes to the Flight Procedures." FAA Br. 29. Moreover, FAA acknowledges that Petitioner "can challenge FAA's

2024 order affirming the 2018 amendments . . . .” *Id.*, at 31. These are the same changes to the Flight Procedures that Petitioner challenged in *Dickson*, No. 19-71581 (9th Cir. July 8, 2021). The endless loop that FAA is referring to is its obstinacy to conduct a proper environmental review mandated by the law and this Court, causing Petitioner to challenge FAA once again.

FAA’s assertion that Petitioner is barred from challenging an amendment to an established procedure merely because the change is relatively small is without merit. FAA argues that *Save Our Skies v. FAA*, 50 F.4th 854 (9th Cir. 2022) permits FAA to make any changes it wishes without fulfilling its obligations under NEPA if FAA deems the change to be small. However, in *Save Our Skies*, FAA only made “minor editorial changes” to procedures implemented in earlier orders. *Id.*, at 857-8. In *Save Our Skies* the changes in question included a “minor wording change” to two departure procedure and did not affect the flight path or altitudes flown. *Id.*, at 859. Here, FAA has made “changes” to the altitudes directly affecting how aircraft can make a vertical decent over Petitioner – far from a minor wording change. *See generally,* Declaration of Terry L. Rhea (the “Rhea Declaration”), at 2-14 (Explaining that FAA changed the altitudes in the Flight Procedures). Thus, FAA’s argument that the altitude changes were merely “minor editorial edits” fails, because the changes in here alter the actual vertical flight path of aircraft—not just the

wording or formatting on an approach plate. Unlike purely textual edits, these modifications have substantive operational impact.

B. Petitioner has standing since the Flight Procedures have caused them an injury.

Petition has suffered an injury which it has provided sufficient evidence to support. Moreover, this issue has previously been addressed in *Dickson*, No. 19-71581 (9th Cir. July 8, 2021), where the Court rejected this argument. FAA is barred from bringing this up again, as the Court has already established Petitioner's Standing. Nevertheless, FAA argues that because the flight altitude changes happened upstream that Petitioner has not suffer an injury. This is incorrect. As Petitioner explained in its opening brief, these changes directly impact how aircraft and Southern California Approach controllers utilize the Approach Procedures through "vectors," which result in lower than published altitudes assigned by Southern California Approach controllers over Culver City. *See* Petitioner Br. at 25-6.

Petitioner's opening brief addressed Standing at length. *See* Petitioner Br. 6-10. FAA has chosen to ignore Petitioner's evidence as to its injury. Petitioner dose not dispute the fact that the Flight Procedures' ground track over Petitioner remains unchanged in the 2018 amendment, but agrees with FAA that FAA did change the altitudes in the 2018 amendment. The Rhea Declaration acknowledges these procedure amendments constitute "changes" rather than restrictions. *See* Rhea

Declaration at 5-6. However, the Rhea Declaration does not address the altitude changes' effect on Southern California Approach controllers' ability to descend aircraft to lower than published altitudes over Culver City using radar vectors while maintaining the Flight Procedures' ground track. As Petitioner set forth in its opening brief, these upstream altitude changes allow approach control to assign aircraft altitudes lower than what is published. *See* Petitioner Br. 25-6. Petitioner is not challenging FAA's ability to use vectors, but rather how these amended upstream altitude changes affect FAA's ability to use vectors differently than before. *See also Dickson*, No. 19-71581 (9th Cir. July 8, 2021) (The Court found that extraordinary circumstances existed when "there was significant controversy about the extent to which aircraft were flying below the minimum altitudes on the original Arrival Routes.") What FAA fails to include are statistics on how frequently aircraft are given vectors and assigned altitudes below those published altitudes as a result of these changes. FAA simply states that since the changes did not occur at waypoint over Petitioner, then there must be no impact to Petitioner. However, FAA does not account for the downstream effects, which do occur over Petitioner, as a result of the upstream changes on the approach.

II. FAA HAS FAILED TO COMPLY WITH ITS OBLIGATIONS UNDER NEPA BY CONDUCTING THE REQUIRED ENVIRONMENTAL STUDY PRESCRIBED BY LAW.

1,000 pages does not a NEPA environmental study make. Yet FAA would have this Court believe that its ability to create voluminous paperwork should suffice to excuse FAA from fulfilling its substantive obligations under NEPA. FAA is correct in stating that Petitioner is "'entitled to claim that an additional impact will be felt from' the 2018 amendments that is 'over and above the effects of the prior orders.'" *See* FAA Br. 36 quoting *Save Our Heritage v. FAA*, 269 F.3d 49, 56 (1st Cir. 2022). However, FAA is incorrect in its assertion that because Petitioner's challenge could affect the underlying procedure its current challenge to the more recent order is deemed untimely. As this Court went on to say in *Save Our Heritage,* "[b]ut the possibility that some of petitioner['s] arguments are time-barred does not defeat those actually directed to the more recent order." *Save Our Heritage*, 269 F.3d 49 at 56. Petitioner is seeking redress from the effects of FAA's most recent order whereby FAA has changed the altitudes, which have caused Petitioner an injury.

FAA alleges that it went to great length to create more paperwork so that it did not have to conduct or produce a proper Environmental Impact Statement ("EIS"). As Petitioner emphasized in its opening brief, it submitted substantial evidence demonstrating that the changes are highly controversial on environmental grounds.

However, FAA need only read its own paperwork to see that its report sufficiently establishes evidence of the Petitioner's injury. Petitioner in its opening brief cited to FAA identifying noise sensitive areas but then summarily dismissing them despite stating in their CATEX that noise would increase. *See e.g.*, Petitioner Br. at 24-5 and 27-30.

A. FAA's categorical exclusion is inappropriate given the extraordinary circumstances when the Flight Procedure is over the second most populous metropolitan area in the United States.

As Petitioner stated in its opening brief, FAA reliance on FAA Order 1050.1F's exclusion for changes above 3,000 feet above ground level (AGL) fails to account for the fact that these changes are "highly controversial" and, thus, FAA's own rules does not automatically permit it to use a categorical exclusion. *See* Petitioner Br. 18.

FAA incorrectly states that as long as it makes the change above 3,000 feet, FAA is automatically permitted use a CATEX. *See* FAA Br. at 38. However, FAA's own rules state that were there are extraordinary circumstances, FAA cannot automatically rely on the general exclusion that permit them to use a CATEX. *See* Petitioner Br. at 18 *citing* FAA Order 1050.1F, para. 5-2. Here, the Arrival Procedures affect the second most populous metropolitan area in the United States. *See* Petitioner Br. 33. Although these changes take effect above 3,000 feet AGL, the

changes nonetheless permit aircraft to descend to altitudes well below the 6,000 feet AGL "restriction" that FAA asserts. *See* Petitioner Br. 25-6.

Moreover, all this additional paperwork has not addressed the "the extent to which aircraft were flying below the minimum altitudes on the original Arrival Routes" and the "substantial dispute over the noise and other environmental impacts that the amended Arrival Routes would cause, and the public controversy surrounding the Arrival Routes was evidence of this dispute." *Dickson*, No. 19-71581 (9th Cir. July 8, 2021). FAA is now attempting to pass the same "post hoc Initial Environmental Review document" with no substantive changes. *Id.*

B. FAA did not conduct an appropriate noise analysis.

The existence of a "continuing controversy" required for standing should be painfully obvious to this Court—Petitioner has already appeared before this Court three times, succeeding in two instances on its claim of absence of environmental review and demonstrating the impact of that absence. FAA changes has produced elevated noise levels throughout the facility, disproportionately burdening minority neighborhoods and damaging historic resources. These repeated challenges plainly embody a "substantial dispute about the size, nature, and effect" of the proposed changes.

The dispute here is not a broad objection to the Arrival Procedure itself, but a challenge to the FAA's own study results. In its opening brief, Petitioner showed

that, when properly evaluated against the agency's own data, the conclusions reached were materially different. *See e.g.*, Petitioner Br. at 21-2. If fact, Petitioner's entire opening brief challenges FAA's self-serving conclusions, which, despite evidence to the contrary, FAA concluded that there is no noise impact as a result of the 2018 amendments. *See e.g.*, Petitioner Br. at 24-5 *citing* Final CATEX/ROD p. 49-56, Section 4.2.11.1.1 (FAA's formula in its CATEX shows that noise will increase by 27% in some cases but then reaches the conclusion that it will not increase noise). Moreover, FAA has the audacity to open its report by stating "controversy on environmental grounds is not anticipated" despite multiple lawsuits from Petitioner that challenge FAA on the environmental impacts of these 2018 amendments. *See* Petitioner Br. 21. Make no mistake, Petitioner is challenging FAA on the amendment's size, nature, and effects.

Moreover, Petitioner provided FAA with an extensive list cultural sites and noise sensitive areas. FAA's careful study ended after it "rationally concluded" that it was inconceivable that its prior conclusion could be changed by new evidence. *See generally*, FAA Br. at 48. FAA even admits in its brief that the State Historic Preservation Officer's failure to object was a deciding factor. *See* FAA Br. at 49. What was required of FAA as a result of *Dickson*, was that FAA had to properly consult with Cities and allow them their "'right to participate in the process and object to the FAA's Findings.'" No. 19-71581 (9th Cir. July 8, 2021). FAA's

conclusory approach is antithetical to the spirt of this Court's ruling and represents the same "application of a categorical exclusion [that] was arbitrary and capricious, in violation of NEPA" it attempted use in 2021. *Id*. It was not sufficient then, is should not be sufficient now.

C. FAA Failed to consider cumulative impacts and environmental justice impacts.

Despite this Court's recognition in FAA's last two unsuccessful challenges that substantial environmental justice impacts flow from routing over densely populated minority communities, FAA continues to insist that its new "restriction" will leave residents beneath the flight path unaffected. This assertion flatly contradicts both the record and the Court's prior determinations.

FAA argues that it is Petitioner's responsibility to identify evidence demonstrating that FAA's so-called "minor changes" will cause a significant noise impact. *See* FAA Br. at 46. But under NEPA, it is FAA—not Petitioner—that must identify, analyze, and disclose any significant noise impacts arising from its procedural changes. FAA has persistently abdicated this duty through three rounds of litigation.

By characterizing its procedural modifications as mere "restrictions," FAA effectively purges them from meaningful noise analysis. This semantic gambit ignores the real-world noise increases that flow from the changes and evades the rigorous review NEPA demands. FAA's environmental review omits any

assessment of cumulative impacts—i.e., the aggregate effect of its proposed changes alongside past, present, and reasonably foreseeable future actions—a clear violation of NEPA's requirement to consider the full scope of environmental consequences.

III. INJUNCTION IS AN APPROPRIATE REMEDY.

FAA has disregarded its obligations under NEPA. Although Petitioner acknowledges the operational burdens an injunction may impose, injunctive relief remains the sole effective means to secure FAA's compliance with the law. FAA's assertion that Petitioner's request for an injunction is merely a disguised attempt to improperly challenge the entire procedural framework is unfounded, particularly given FAA's failure to deliver the environmental impact statement it promised this Court. Despite years granted to complete the requisite analysis, FAA has offered only delays and excuses. Accordingly, Petitioner hereby renews its request for injunctive relief on the grounds and for the reasons set forth in its opening brief.

CONCLUSION

FAA has offered no cogent justification for its refusal to prepare the full EIS this Court ordered. Instead, it resorts to attacking Petitioner's standing and advancing unsupported assertions that the procedural changes will leave noise levels unchanged despite contradictions in its own report. By dismissing these revisions

as mere "minor editorial edits," FAA overlooks the fact that these changes are substantive alterations to the vertical approach path, which materially increase noise impacts.

Petitioner asks this Court to reject FAA use of a CATEX and order FAA to complete a proper EIS as required by law. The Court must hold FAA accountable. It must enforce its prior ruling, require a full and proper environmental review, and enjoin FAA from implementing these procedures until that review is complete. Only then will justice be served, the law upheld, and the rights of Petitioner's community protected.

Respectfully submitted on April 24, 2025.

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