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## **Enforcement Priorities Comment**

*June 3, 2018*

TO: Blane A. Workie  
Office of Aviation Enforcement and Proceedings  
Office of the General Counsel  
US Department of Transportation  
(202) 366-9342

RE: DOT-OST-2018-0067; Comment on Statement of Interim Enforcement  
Priorities Regarding Service Animals

Ms. Workie:

We write this comment in the context of having recently submitted a 926-response 2018 survey report in a partnership under the aegis of United Service Animal Users, Supporters, and Advocates (USAUSA).<sup>1</sup> Much of the justification and backstory for what we write here is in that report ("2018 survey report"), as well as USAUSA's previous survey report ("2016 survey report"),<sup>2</sup> and USAUSA's post-Reg Neg<sup>3</sup> compromise recommendations ("2016 compromise comment").<sup>4</sup>

Before we examine the individual topics in DOT's Statement of Interim Enforcement Priorities Regarding Service Animals ("SIEP"),<sup>5</sup> we provide a much-needed frame of reference that clarifies the burden of proof for increasing access barriers and decreasing rights for people with disabilities.

<sup>1</sup> See USAUSA's 2018 "Flight Access Survey Report", available through our public submission to DOT in PDF and .docx formats: <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0020>

<sup>2</sup> "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users", available through our public submission to DOT in PDF and .doc formats: <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0296>

<sup>3</sup> "Reg Neg" refers to the Negotiated Rulemaking process conducted by DOT among stakeholder representatives known as the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee), concluding in 2016. <https://www.transportation.gov/access-advisory-committee>

<sup>4</sup> "Pre-NPRM Comment: DOT's ACAA Service Animal Regulations", available through our public submission to DOT in PDF and .doc formats: <https://www.regulations.gov/document?D=DOT-OST-2015-0246-0290>

<sup>5</sup> <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

Our comment's contents otherwise follow the SIEP organization, as parsed below:

- §1. *Overview of statistics and the burden of proof before rights are reduced*
  - §1.a. *Behavior*
  - §1.b. *Misuse*
- §2. *Service animals—species and number*
- §3. *Advance notice*
- §4. *Proof that an animal is a service animal*
- §5. *Check-in requirements*
- §6. *Documentation*
  - §6.a. *Burdens must first meet the burden of proof*
  - §6.b. *Gesturing absently at justification is unsatisfactory*
  - §6.c. *Let's be rabid about the facts*
  - §6.d. *Barriers as mere deterrents, not for health and safety*
- §7. *Containing emotional support animals in the cabin*

§1. *Overview of statistics and the burden of proof before rights are reduced*

A government agency that is tasked with enforcing civil rights should maintain those rights by default. If a party wishes to increase burdens on people with disabilities or otherwise reduce disability rights, the burden of proof for this rights-reduction should lie with that party, not on those trying to stem the egress of their rights.<sup>6</sup>

We have seen no hard data justifying the rights-reductions DOT is allowing.<sup>7</sup> There *is* clear evidence that the old and new burdens substantially and systematically limit flight access for people with disabilities.<sup>8</sup> The situation would be backward and misadministered if those

<sup>6</sup> This refereeing principle is even more important when the rights holders have very little power compared to the rights takers. DOT is the main body rights holders depend on to balance the power differential between individuals with disabilities and the airline corporations providing services upon which the individuals rely. Your office made it clear to us in an April 4th email that DOT prefers to adopt an evidence-based approach to crafting guidance. Here is an excerpt from that email: "With respect to whether the Department will be issuing guidance on basic economy seating programs, we traditionally decide whether or not to issue a guidance document when we receive a significant number of complaints about an issue or we have received data indicating that there is significant concern in the disability community about an airline policy or practice."

<sup>7</sup> In the SIEP Background section, after explaining how the ACAA requires access for service animal users, DOT notes "[...]the Department recognizes that airlines have a responsibility to ensure the health, safety, and welfare of all of its passengers and employees. In enforcing the requirements of Federal law, the Department is committed to ensuring that our air transportation system is safe and accessible for everyone." If DOT were to allow reduced access for service animal users, it seems this would have to be clearly justified on such bases as those mentioned—health and safety—so mere evidence of increased travel is not sufficient. Yet we await relevant evidence as access is nonetheless reduced.

<sup>8</sup> See USAUSA's 2018 Flight Access Survey Report: <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

in power could defeat discrimination-revealing data with a pre-emptive strike of little more than sensational anecdotes of individuals' wrongdoings.

Since DOT has already allowed airlines to add new types of burdens without the usual opportunity of public comment, it is worse even than a serious misjudgment of the burden of proof. DOT has allowed airlines to subvert the normal course of justice.<sup>9</sup> We find it difficult to believe there is, all of a sudden, an emergency that justifies the allowance of significant new burdens—especially in the face of the forthcoming regulation update.<sup>10</sup> If anything, the data indicate a crisis that merits the reduction of burdens.

There are two distinct issues in play here for adequate statistical study of individuals' actions.<sup>11</sup> First, there are animal-related behavior issues, which directly present problems for safe and unimpeded access for people with disabilities. Second, there are issues of misuse of the laws—both in terms of fraud and of misuse of the laws based on ignorance. Such issues within this category distractingly flag our moral disgust, but crucially signal the need for education, respectively.

The second category, misuse, can be indirectly tied to the first, since (we imagine) both ignorant and deceitful uses of access laws are more likely to facilitate behavior issues than an honest, knowledgeable approach. However, it is unclear especially how this second set of issues could justify the erection of significant front-end access barriers for people with disabilities, rather than targeting the actual, identifiable culprits.<sup>12</sup> Before diving into SIEP-tailored questions of prevention and remediation, let's get a bit clearer on the sorts of statistics that would be helpful and that wouldn't.<sup>13</sup>

### §1.a. *Behavior*

The number of individual behavioral incidents related to service animals *may* be going up, but it is unclear whether the *incidence* (rate) of these

<sup>9</sup> We are forced to wonder: Why does DOT only ask airlines for data to justify their policies after allowing such rights-reducing policies to be put into effect? This allows airlines to severely increase burdens on people with disabilities by corporate fiat, without being subject to any serious oversight. If airlines are empowered to cow DOT into using regulations such as 14 CFR §382.117(f) to justify practically any new type of systematic barrier (against the ACAA's prime directive), people with disabilities will be forced to consider recovery of their rights by judicial means. [https://www.ecfr.gov/cgi-bin/text-idx?SID=5aa2959003ebb44d09d6d57318a9eb9a&node=se14.4.382\\_1117&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=5aa2959003ebb44d09d6d57318a9eb9a&node=se14.4.382_1117&rgn=div8)

<sup>10</sup> <https://www.regulations.gov/docket?D=DOT-OST-2018-0068>

<sup>11</sup> Here we write of the sort of data needed as evidence for the argument that airlines should be allowed to reduce civil rights for people with disabilities wanting to fly. Our survey reports already provide weighty evidence for an overall contrary argument.

<sup>12</sup> See especially §1 of USAUSA's 2018 survey report, calling for DOT to value human rights when it comes to disability access.

<sup>13</sup> §3.a. of the 2018 survey report touches on the essential point that statistics should often be only a secondary consideration when it comes to ensuring disability rights.

occurrences is varying significantly. The number of flights in the US is on the rise,<sup>14,15</sup> while statistics regarding animal-related incidents are both opaque<sup>16</sup> and in such low numbers that statistical significance is hard to come by. As a start, the relevant rate for DOT to consider is the incidence of negative service animal- or ESA-related events per service animal or ESA flying.<sup>17</sup> DOT must look beyond absolute numbers related to service animals and not miss the forest for the trees.

This relevant rate would be for events in which a purported service animal or ESA presented a significant behavioral problem, or in which the accompanying passenger presented a significant behavioral/control problem that was related to their animal. This should not include a prominent statistic from some airlines, which is incidents related to the paperwork burdens DOT currently allows. Such reports indicate more of a problem with the regulations than they do with the passengers or animals subjected to those regulations.

### §1.b. *Misuse*

Airlines cannot claim the number of service animal and ESA flyings is dramatically on the rise, then assume this must mean fraud is on the rise. What is most relevant on this front is whether the *rate* of fraud (or general ACAA misuse) is on the rise.

An easy explanation for the rise in animal use for disability mitigation is the dramatic increase in public awareness in recent years, resulting in more people with disabilities taking action to use animals to help them live their lives. This awareness and resulting rise in use should be seen as a good thing overall.<sup>18</sup> We need not imagine a fraudster hiding behind every tree.

It is easy, with the current system, for a shadowy ignorance to follow the

<sup>14</sup> See the Bureau of Transportation Statistics (BTS) release BTS 16-18, "2017 Traffic Data for U.S Airlines and Foreign Airlines U.S. Flights": <https://www.bts.gov/newsroom/2017-traffic-data-us-airlines-and-foreign-airlines-us-flights>

<sup>15</sup> The current BTS "U.S Air Carrier Traffic Statistics" are searchable: <https://www.transtats.bts.gov/TRAFFIC/>

<sup>16</sup> Airlines' data collection methods are not always clear, but a prime example of the muddled use of airlines statistics is that airlines generally lump together psychiatric service animals (PSAs) and emotional support animals (ESAs). These are very different entities, since PSAs are supposed to have much more training and public exposure than ESAs. By collecting data on PSAs and ESAs in one indiscernible grouping, airlines lose the ability to claim they have data showing problems with PSAs and ESAs—as opposed to just with ESAs, for example.

<sup>17</sup> This is similar to how DOT should consider the rate of (pet) animal cargo deaths per animal trip, since some airlines carry many more animals per year than others, making their absolute losses higher even if their rate of loss were much lower.

<sup>18</sup> See the January 31, 2018 article by Brad Morris in USA Today, "More animals on airplanes are good" (the newspaper altered the author's title and its resultant meaning): <https://www.usatoday.com/story/opinion/2018/01/31/opposing-view-overall-animals-airplanes-good/109987262/>

public's casual understandings of service animals and ESAs. Without an access system that bears an educational light, we would not be surprised were the well-intentioned misuse to continue. However, we have neither clear evidence of the rate of fraud nor the rate of other misuse. As far as we know, there is no airline that can keep track of this (or tries to).

Instead, during the Reg Neg we were shown numbers related to paperwork issues in general. Such numbers could represent anything from, for example, a non-disabled pet owner unquestionably forging paperwork, to a psychiatric service dog user's documentation being one day out of date. Anything beyond a catch-all number for this variety of issues was in anecdotal form.

Surely, airlines could provide better evidence for their case if this were such a large problem. This would involve devoting more resources to investigating claims or verifying paperwork. However, the weakness of airlines' evidence of misuse seems to show us two things. First, if they haven't put their money where their mouths are (to create targeted evidence-gathering systems), it must not be an elephantine problem so much as it is a gadfly. Second, the whole idea of a paperwork-based access system might have us pointed down a muddied rabbit hole in its approach. Instead, we should think seriously of turning right round and considering how the system should value human rights as opposed to playing fraudster whack-a-mole with increasing mounds of third-party paperwork.

We are not looking to reformulate the regulations here, though. Our perspective on the SIEP is that—as an *interim* protocol<sup>19</sup>—DOT should not significantly alter the present access system, unless DOT were to lean toward greater rights and access. DOT should not dispose of rights by allowing new barriers, unless there were an enormous and public body of evidence that clearly carries the burden of proof. In the absence of the public having the ability to examine and critique any such body of evidence, new access barriers simply cannot have sufficient justification.

## §2. *Service animals—species and number*

The plan from DOT's Enforcement Office under the species and number heading appears reasonable on its face.<sup>20</sup> The plan also does not strike us

<sup>19</sup> Our perspective values the prevention of sudden upheaval, and so we may advocate for an immediately applicable interim policy in a way that differs quite significantly from the type of system we prefer for the long term.

<sup>20</sup> "The Enforcement Office intends to exercise its enforcement discretion by focusing its resources on ensuring that U.S. carriers continue to accept the most commonly used service animals (i.e., dogs,

as a significant departure from the previous enforcement principles in this area, based on Reg Neg discussions.

We wish to highlight that during this interim period, DOT should remain open to evaluating the non-prototypical situations on a case-by-case basis, as DOT notes it will when it comes to species beyond dogs, cats, and miniature horses. It is a virtue to remain open to reasonable uses of the law that exceed our personal imaginings.

### §3. *Advance notice*

There is overwhelming momentum for the discrimination against psychiatric service animal users to stop. If users of service animals for all other disability types are protected from an access barrier, it is plain-faced discrimination not to shield those with mental health-related disabilities from that same barrier.<sup>21</sup> In support of this sentiment, we provided evidence through a 2016 survey report<sup>22</sup> and 2018 survey report,<sup>23</sup> as well as lodged protests throughout the Reg Neg and gained coalition support through our

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cats, and miniature horses) for travel. While the Enforcement Office will focus on ensuring the transport of commonly used service animals such as dogs, cats and miniature horses by U.S. carriers, it may take enforcement action against U.S. carriers for failing to transport other service animals on a case-by-case basis. Airlines are expected to continue to comply with the existing service animal requirement which allows U.S. airlines to deny transport only to certain unusual service animals such as snakes, other reptiles, ferrets, rodents and spiders. The Enforcement Office believes that the public interest will be better served by this exercise of its enforcement discretion because dogs, cats, and miniature horses are the most commonly used service animals.

"The Department's service animal regulation does not indicate whether airlines must allow passengers to travel with more than one service animal. In the past, the Enforcement Office has informed airlines that they will not be subject to enforcement action if they limit passengers to transporting three service animals. The Enforcement Office continues to recognize that a passenger may require more than one task trained service animal. Multiple task trained service animals may be needed to the extent that they are trained to perform different tasks, or in cases where an individual trained service animal must rest and cannot perform tasks for the passenger for extended periods. On the other hand, it is less clear that passengers require more than one ESA for travel or at the passenger's destination. Accordingly, as a matter of discretion, the Enforcement Office does not intend to take action if airlines limit passengers to transporting one ESA. Additionally, the Enforcement Office does not intend to take action if airlines limit passengers to transporting a total of three service animals." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>21</sup> It seems from the SIEP that DOT might recognize this, yet be held captive by current regulations for the moment. DOT strangely claims that advance notice requirements would harm non-PSA service animal users, yet they are okay for PSA and ESA users: "Thus, under existing rules, carriers may not otherwise require advance notice for passengers traveling with service animals (e.g., seeing eye dogs) other than ESAs or PSAs unless the flight segment is 8 hours or more. Requiring advance notice for service animals outside of these specific circumstances violates the Department's regulation and may significantly harm passengers with disabilities as it prevents them from making last minute travel plans that may be necessary for work or family emergencies." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>22</sup> <https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-DOT-Info-Request.pdf>

<sup>23</sup> <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

2016 compromise comment.<sup>24</sup>

While we believe that justice delayed is justice denied—and justice for our community has *long* been denied—it does not seem reasonable to expect airlines to majorly alter their access protocols in the short term, before new rules are crafted with sufficient lead time.<sup>25</sup> Therefore, in a show of fair-mindedness, we are not pushing for any alteration in DOT's proposed interim enforcement plan when it comes to advance notice.

#### §4. *Proof that an animal is a service animal*

In the SIEP, DOT writes:

*Airlines have pointed out to the Department that accepting identification cards, harnesses, or tags as the sole evidence that an animal is a service animal is problematic because service animal paraphernalia are sold online and may be obtained by unscrupulous individuals so their pets can fly in the aircraft cabin as service animals. However, the Department's disability regulation makes clear that these protections are for individuals with disabilities.[...]While airlines are required to accept items such as vests and harnesses as evidence of a service animal's status, it would be reasonable for airlines to also request the passenger's credible verbal assurance to ensure the passenger is an individual with a disability who has a need for that service animal.*<sup>26</sup>

We find this position eminently reasonable. Beyond the initial determination of service animal status, we also note that it is a team's *behavior*, *not belongings* that should be the focus.<sup>27</sup>

Some airline representatives do not seem to be aware that not only do many owner-trainer service animal users rely on gear purchased online in order to outfit their service animals as they see fit, but so do those who obtain their service animals from programs. Some program-provided gear

<sup>24</sup> <https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-Pre-NPRM-Comment.pdf>

<sup>25</sup> We say this about airlines as a whole through gritted teeth, since some of the major airlines have in fact already majorly altered their access protocols recently by adding new barriers with 1–2 months' notice to passengers. Presumably, they do so under the theory that 14 CFR §382.117(f) allows them to try out whatever barriers they please on users of psychiatric service animals and ESAs.

<sup>26</sup> <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>27</sup> As well, we highlight that no identifying piece of gear should be required for access. Some dogs are much more comfortable working without a harness or vest, and in practice ID cards serve mainly to misdirect attention that should be focused more on behavior.

is either uncomfortable for the individual dog, doesn't work well for the user's personal needs, is outdated and suboptimal, or is simply at striking odds with the user's good taste.<sup>28</sup>

We alert DOT to these factors to ensure DOT has more than a superficial understanding of the circumstances. This may prevent DOT from suffering a false belief, such as that handing program-associated companies the only market share for service animal gear would be any kind of useful solution at all. Denying service animal users access to the best gear the market has to offer would only hurt those who want to follow the rules, while the committed fraudsters would always find a way (much as shopper demand makes counterfeit high-end purses readily available).

### §5. Check-in requirements

We applaud DOT's recognition in the SIEP that the ACAA's anti-discrimination order applies to checking in. DOT writes:

*For these reasons, and considering the prohibition against discrimination in the ACAA, the Enforcement Office intends to act should an airline require that a passenger with a service animal check-in at the ticket counter, thereby denying those passengers the same benefits that are available to other passengers.*

At the time of this writing, Delta provides an example of violating this principle.<sup>29</sup> We do not think it is an acceptable workaround for airlines like Delta not to require the actual check-in at the ticket counter, but to instruct passengers with service animals to be otherwise "verified" at the ticket counter. We urge DOT to consider ticket counter "verification" to be functionally equivalent to ticket counter check-in when it comes to anti-discrimination enforcement.

### §6. Documentation

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<sup>28</sup> For a better understanding of this issue, see PSDP's October 6, 2014 article, "There Are No Fake Vests": <https://www.psychdogpartners.org/board-of-directors/board-activities/advocacy/fake-vests>

<sup>29</sup> On the first page of Delta's "Emotional Support/Psychiatric Service Animal Request" forms, instruction #4 is "Visit the airport check-in counter, where your request will be verified at the airport by a Delta Representative". <https://www.delta.com/content/dam/delta-www/pdfs/policy/EmotionalSupportAnimal-RequiredForms.pdf>

Other Delta passengers do not have to be "verified" at the check-in counter. [https://www.delta.com/content/www/en\\_US/traveling-with-us/check-in/options.html](https://www.delta.com/content/www/en_US/traveling-with-us/check-in/options.html)



Stakeholders of all types universally complain that **the current access system based on third-party documentation doesn't work**.<sup>30</sup> We've provided ample evidence **the system significantly harms access** for people with disabilities.<sup>31</sup> Yet **airlines are redoubling with more of the same kind of barriers that have harmed and haven't helped**, and DOT appears unbothered by this subversion of the most basic ACAA mandate.<sup>32</sup>

### §6.a. *Burdens must first meet the burden of proof*

Adding more burdens to people with disabilities serves mainly to discourage access.<sup>33</sup> A new analysis of multi-year USAUSA survey data shows that almost 2 out of 3 people mention the weight of the burdens in their open-ended responses.<sup>34</sup> The access reduction is so surprisingly large that it could not possibly be offset by any amount of fraud reduction.<sup>35</sup> Of

<sup>30</sup> It is no glib embellishment to say this, but instead an expert report about prevailing views based on the Reg Neg and any variety of public and personal comments from a diversity of stakeholder types.

<sup>31</sup> See our 2016 survey report and 2018 survey report, respectively:

<https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-DOT-Info-Request.pdf>

<https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>32</sup> Generally, that mandate is not to allow discrimination on the basis of disability. Discriminating on the basis of disability type, such as allowing barriers for users of psychiatric service animals that are not allowed for users of other types of service animals, is a straightforward violation of this mandate. From 49 USC §41705: "[...]an air carrier[...]may not discriminate against an otherwise qualified individual on the following grounds:[...] the individual has a physical or mental impairment that substantially limits one or more major life activities." <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title49/html/USCODE-2011-title49-subtitleVII-partA-subpartii-chap417-subchap1-sec41705.htm>

<sup>33</sup> See §3.b. of the 2018 survey report, on "Prime directive vs. extreme anti-misuse measures". <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>34</sup> This analysis is mainly thanks to Jenine Stanley and covers the qualitative responses from the 2016 survey report and the 2018 survey report. In the 2016 responses from users of psychiatric service animals and ESAs, 33 out of 36 (92%) mentioned at least one aspect relating to the burdens. In the 2018 responses from users of all types of service animals and ESAs, 243 out of 393 (62%) mentioned burdens. Overall, 276 out of 429 (64%) mentioned burdens. For the qualitative data, see each survey report; for the analysis method, refer to §5.b. of the 2018 survey report. The 2016 responses are captured by the following categories, each of which falls under the "Burdens" category in the 2018 survey report (except "Other"; there were only three responses that matched "Other" but no burden category):

18/36 (50%) Burdens based on documentation: comments include references to financial and time costs, not having insurance, not being able to find a doctor to write the letter, costs of having a disability triggered by any of the aforementioned

23/36 (64%) Disability Stigma: comments include direct references to feeling stigmatized by being classified as having a PSA, unfair or discriminatory treatment or practices surrounding PSAs

7/36 (19%) No Longer Flying: comments that state the person is no longer choosing or able to fly because of having a PSA

8/36 (22%) Other: comments referencing other aspects of travel such as size of animal, other civil rights issues, other types of disability-based discrimination, etc.

<sup>35</sup> At least 3 out of 4 don't fly or fly less due to the access burdens. See §4 and §5 in the 2016 survey

course we could eliminate *all* fraud by eliminating *all* access, but the point of the ACAA is to ensure access, not to slash fraud by any means possible.

Beyond this, we have no evidence to suggest third-party documentation requirements reduce fraud at all. Quite the contrary, airline protests of fraud have shot up since these requirements were instituted. One might draw the conclusion that relying on third-party paperwork for access simply creates a more straightforward fraud pipeline, wherein the paperwork is seen as a golden ticket for unimpeded access rather than having to worry about actual animal training, behavior, or education.

One way to narrow the question before us is to ask whether DOT should stop airlines from adding more third-party documentation burdens, such as veterinary/vaccination paperwork.<sup>36</sup> Clearly, our answer is "no", and it is not simply because they are "new requirements".<sup>37</sup> This is the kind of burden that runs contrary to the ACAA mandate and there is no evidence they do anything but severely damage access for people with disabilities.<sup>38</sup>

DOT officials' explanation is not at all that the new burdens from airlines are *justified*. Instead, it seems DOT just isn't going to treat them like they're *unjustified*—or consider them to be in need of any significant evidentiary justification whatsoever.<sup>39</sup> We have articulated that the burden of proof

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report, plus the data in §5.a. of the 2018 survey report (ibid. above).

<https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-DOT-Info-Request.pdf>

<sup>36</sup> Presumably this would happen by DOT announcing its intention to take enforcement action in such cases. We are not going to get bogged down here by discussing various iterations of passenger (non-third-party) attestations. Our overall view is that significant new burdens should wait for the rulemaking. Our preferences regarding a decision tree at that point are detailed in the 2016 compromise comment. <https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-Pre-NPRM-Comment.pdf>

<sup>37</sup> As DOT says, "[...]we understand the disability advocates' view that these policies violate the Department's disability regulation because they impose new requirements on passengers with disabilities." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>38</sup> §3.b. of our 2018 survey report elaborates, but we will note we're shocked and angered at statements from DOT in the SIEP such as "At present, the Enforcement Office is not aware of any airline requesting information from ESA or PSA users that would make travel with those animals unduly burdensome or effectively impossible (e.g., requiring veterinarians to directly guarantee or certify that an animal will behave appropriately onboard an aircraft)." When our 2016 survey report presented the discovery that 3 out of 4 users of psychiatric service animals and ESAs reduced or eliminated their flying as a result of the contemporary burdens targeting them, we thought DOT could not possibly claim there was no undue burden—the proof was in the pudding, and it was pudding DOT requested from us. Now that our 2018 survey report further substantiates this, with much larger numbers and by showing that the new burdens are even more disastrous for disability access, we are simply aghast that DOT could publish such a sentiment. How many people with disabilities must a rule stop from flying before DOT officials think a barrier is undue? And what evidence is there that any of the barriers were due in the first place? The present calculus must be deficient in some way. <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>39</sup> The apparent lack of concern from DOT is exhibited in this paragraph from the SIEP: "The Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior so long as the

should rest with the rights-takers *before* taking civil rights away from people with disabilities,<sup>40</sup> and we hope DOT will see this is the only way to safeguard disability rights from being trampled.

Even though DOT has not yet sought interim justification to approve of the airlines' burden-stacking, we can still examine whether the reasoning airlines provide bears scrutiny. If it does not, it is DOT's duty to stop the new burdens.

### §6.b. *Gesturing absently at justification is unsatisfactory*

DOT reports what our airline contacts have told us: "[...]certain carriers have indicated that they need veterinary forms or behavioral attestations to determine whether a service animal, particularly a PSA and/or an ESA poses a direct threat."<sup>41,42</sup>

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documentation is not required for passengers seeking to travel with a service animal that is not an ESA or PSA. Under section 382.27, carriers may not require advance notice to obtain services or accommodations, except under circumstances specifically permitted by rule. As noted above, however, under DOT's rule, airlines are permitted to ask for up to 48 hours' advance notice for passengers using PSAs and ESAs. 14 CFR 382.27(c)(8). The Department permits airlines to require 48 hours' advance notice of a passenger wishing to travel with an ESA or PSA in order to provide the carrier the necessary time to assess the passenger's documentation. As such, the Enforcement Office does not intend to use its limited resources to pursue enforcement action against airlines for requiring proof of a service animal's vaccination, training, or behavior for passengers seeking to travel with an ESA or PSA. At present, the Enforcement Office is not aware of any airline requesting information from ESA or PSA users that would make travel with those animals unduly burdensome or effectively impossible (e.g., requiring veterinarians to directly guarantee or certify that an animal will behave appropriately onboard an aircraft). The Enforcement Office will continue to monitor the types of information sought by ESA and PSA users, however." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>40</sup> See §1 above.

<sup>41</sup> <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019>

<sup>42</sup> DOT gestures in its current ANPRM toward what we believe everyone had previously assumed about 14 CFR §382.117(f)—that the evaluation of direct threats to health or safety was intended to be based on individualized, in-person observations by airline personnel, rather than a license for airlines to lay down blanket burdens across classes of people with disabilities. See DOT's ANPRM, footnote 54: "An airline may refuse transportation of a service animal if the animal would pose a direct threat to the health or safety of others. However, the Department's regulation does not clearly specify whether airlines must make this direct threat assessment on an individualized case-by-case basis. The DOT guidance document referenced in the regulation does suggest that the direct threat should be individualized as it states that the analysis should be based on observable actions". <https://www.regulations.gov/document?D=DOT-OST-2018-0068-1157>

**It is clear to us that DOT's direct threat analysis explanation in its 2008 guidance prohibits using a "direct threat" concern as a reason to prejudicially block access to groups of people with disabilities:** "If the carrier's reason for excluding a passenger on the basis of safety is that the individual's disability creates a safety problem, the carrier's decision must be based on a "direct threat" analysis. This concept, grounded in the Americans with Disabilities Act, calls on carriers to make an individualized assessment (e.g., as opposed to a generalization or stereotype about what a person with a given disability can or can't do) of the safety threat the person is thought to pose. In doing so, the carrier must take into account the nature, duration and severity of the risk; the probability that the potential harm will actually occur; and whether reasonable mitigating measures can reduce the risk to the point where the individual no longer poses a direct threat. In using its authority to make a direct threat determination and exclude a passenger, a carrier must not act inconsistently with other provisions of Part 382. Direct threat determinations must not be used as a sort of de facto exception to

Veterinarians are not in a position to predict how an animal would behave in a flight environment, nor do they want to.<sup>43,44</sup> Veterinarians can give information about vaccinations and the appearance of parasitic critters such as fleas. However, we have not once heard of fleas being a major problem—or a minor one—on airplanes. We *have* heard of rare, heavily sensationalized reports of dog bites, though with no statistics to aid us.

Clearly, a form from a veterinarian does not prevent a dog from biting. We have been told by DOT<sup>45</sup> and airlines<sup>46</sup> that airlines now want people with disabilities to acquire, submit, and carry these forms in case their animal bites someone (and breaks the skin, presumably). It's hard for us to see how such a rare occurrence could justify requiring hundreds of thousands of people with disabilities to each spend \$115 and 6 hours of personal time on average to surmount a new set of barriers.<sup>47</sup>

Let's strain credulity and pretend those barriers are not an overwhelming problem. We may now ask whether the forms would help in any way.

### *§6.c. Let's be rabid about the facts*

The principle concern airlines offered in connection with veterinary forms seems to involve rabies. It is a zoonotic disease (transmissible to humans) and could increase the likelihood of aggressive behavior. Here we engage in a basic investigation of the matter that anyone else could have done

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specific requirements of this Part (e.g., the prohibition on number limits)." Even if this were somehow twisted into allowing veterinary forms, airlines have not engaged even in any half-hearted attempt to justify the forms based on a risk assessment and risk mitigation analysis. We believe these processes would quickly fail for the reasons elaborated in our present comment.

<https://www.federalregister.gov/d/08-1228/p-305>

<sup>43</sup> The comments from veterinarians on the article "AVMA, United Airlines reach agreement on veterinary health form" indicate that many veterinarians (1) do not understand the world of service animals and ESAs and (2) are not willing to sign airline forms. The article's 3/8/18 revision itself hints at this reluctance: "The AVMA[...] flew into action when United Airlines announced a new policy requiring a veterinary signature vouching for the health, behavior and training of psychiatric service and emotional support animals (ESA) flying with United passengers.

"The AVMA reviewed United's Veterinary Health Form[...] and recognized that the information it requested might not position United to make good decisions that would appropriately support the health and welfare of their animal and human passengers. The statements on the form also created potential liability risks for veterinarians attesting to them."

[https://atwork.avma.org/2018/03/02/avma-united-airlines-reach-agreement-on-veterinary-health-form/?utm\\_source=smartbrief&utm\\_medium=email&utm\\_campaign=smartbrief-assoc-news](https://atwork.avma.org/2018/03/02/avma-united-airlines-reach-agreement-on-veterinary-health-form/?utm_source=smartbrief&utm_medium=email&utm_campaign=smartbrief-assoc-news)

<sup>44</sup> See §3.b. of the 2018 survey report for detail on this topic. <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>45</sup> At a February 6, 2018 meeting in DOT's DC headquarters.

<sup>46</sup> In phone calls between January and April, 2018.

<sup>47</sup> See §2.b. of the 2018 survey report. <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

before instituting new burdens.<sup>48</sup>

Each year between 2011 and 2015 (in the US) there were between 59 and 89 cases of rabies reported in dogs, averaging 74 per year.<sup>49</sup> In 2012, there were 69,926,000 dogs in the US.<sup>50</sup> This means the incidence of rabies over the course of the entire year was 0.0001%, or one in a million. Since an animal is only able to transmit rabies for a period of "several days" after an incubation period and before it is "obvious to even an untrained observer" that there's a problem,<sup>51</sup> a generous estimate is that any given dog is likely to have rabies at a rate of 0.000002% for any given day out of the year (1 in 50 million).<sup>52</sup> It is plain why domestic dogs are not even considered to be a significant source of rabies anymore.<sup>53</sup>

Rabies is transmitted through saliva via a bite into the muscle from a rabid animal. An animal cared for enough to be a service animal (or claimed to be one) is probably much less likely to have rabies than animals that are less cared for and left where one could not know whether they've been bitten. They are also more likely to have standard veterinary care, including a rabies vaccine or titer test.<sup>54</sup> When an animal is known to have been bitten by another and has not been vaccinated, it is standard for there to be monitoring or a quarantine.<sup>55</sup>

If the point of the vaccination form is to protect the public from rabies, that argument falls apart at the briefest glance at this data. Rabies is a fear-inducing disease since it involves animal bites and is fatal without treatment, yet only 1–3 people are reported to have rabies each year in the US.<sup>56</sup>

Since rabies is so rare, whether to treat a human bitten by a dog is not the

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<sup>48</sup> At least as far as the citations go. We also consulted with an ER doctor at a prestigious university hospital, a local veterinarian, a PhD biologist, a former veterinary technician, a supervisor at a law enforcement agency with a major airport in its jurisdiction, an emergency dispatch supervisor, and PSDP board member Heather Walker, who has worked as an Emergency Services Dispatcher for a sheriff's department since 2002.

<sup>49</sup> From CDC's "The Burden of Rabies" article infographic.

<https://www.cdc.gov/features/dsrabies/index.html>

<sup>50</sup> From AVMA's "U.S. Pet Ownership Statistics".

<https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership.aspx>

<sup>51</sup> See CDC's "The Path of the Rabies Virus" <https://www.cdc.gov/rabies/transmission/body.html>

<sup>52</sup> We interpret CDC's "several days" as 7 days, or 1 week, and so divide the earlier incidence by 52.

<sup>53</sup> From the CDC's "Human Rabies": "[...]domestic dogs[...]are no longer considered a rabies reservoir in the United States." [https://www.cdc.gov/rabies/location/usa/surveillance/human\\_rabies.html](https://www.cdc.gov/rabies/location/usa/surveillance/human_rabies.html)

<sup>54</sup> Some dogs have bad reactions to vaccines, so instead of needlessly re-injecting the vaccine, owners will choose to have a titer test performed to see whether the dog has retained sufficient antibodies.

<sup>55</sup> "Cats, dogs, and ferrets that have not gotten their rabies shots and are bitten by an animal may have to be quarantined for six months or euthanized." <https://www.cdc.gov/features/dsrabies/index.html>

<sup>56</sup> From the CDC's "Human Rabies". [https://www.cdc.gov/rabies/location/usa/surveillance/human\\_rabies.html](https://www.cdc.gov/rabies/location/usa/surveillance/human_rabies.html)

foregone result of a conversation with a doctor.<sup>57</sup> It's unlikely even that postexposure prophylaxis would be needed.<sup>58</sup> If it were needed, we have been fortunate that since the 1980s, the prophylactic protocol has been much easier and less painful—this means that even if the biting animal's vaccination status can't be verified, it does not portend a torturous ordeal.<sup>59</sup>

We belabor the facts to emphasize that people with disabilities deserve the courtesy of basic fact-checking and sufficient reasoning before burdens are forced on them. This applies beyond the specific example of rabies vaccination verification or any veterinary forms.

#### §6.d. *Barriers as mere deterrents, not for health and safety*

Airlines are resistant to sharing passenger information, so it does not seem like that is the point of the forms. Forms may be forged or an animal may acquire rabies after the form is completed, so it's not possible for the airline to use the forms to provide any guarantees to any passengers.

If there is a serious animal bite, we cannot see how the form would be of significant help. If airlines are concerned about passenger health or the need for law enforcement involvement, they can call ahead so the proper response is waiting at the airport.

We have heard the protest from some airlines that the baseline law enforcement response to airports is extreme, and too excessive for a dog bite. However, a person (or dog) bitten in the air deserves the same minimum level of law enforcement, medical care, and animal control involvement as a person bitten anywhere else. It is unjust to deny that level of basic response and care due to an airline not wanting to bother the authorities, or the authorities not wanting to be bothered.

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<sup>57</sup> From the CDC's "When should I seek medical attention?": "See your doctor for attention for any trauma due to an animal attack before considering the need for rabies vaccination. Your doctor, possibly in consultation with your state or local health department, will decide if you need a rabies vaccination. Decisions to start vaccination, known as postexposure prophylaxis (PEP), will be based on your type of exposure and the animal you were exposed to, as well as laboratory and surveillance information for the geographic area where the exposure occurred."

<https://www.cdc.gov/rabies/exposure/index.html>

<sup>58</sup> From CDC's "Domestic Animals" section on rabies exposure: "If you were bitten by a cat, dog, or ferret that appeared healthy at the time you were bitten, it can be confined by its owner for 10 days and observed. No anti-rabies prophylaxis is needed. No person in the United States has ever contracted rabies from a dog, cat or ferret held in quarantine for 10 days."

<https://www.cdc.gov/rabies/exposure/animals/domestic.html>

<sup>59</sup> "In the United States, postexposure prophylaxis consists of a regimen of one dose of immune globulin and four doses of rabies vaccine over a 14-day period. Rabies immune globulin and the first dose of rabies vaccine should be given by your health care provider as soon as possible after exposure. Additional doses or rabies vaccine should be given on days 3, 7, and 14 after the first vaccination. Current vaccines are relatively painless and are given in your arm, like a flu or tetanus vaccine." *ibid.* See also articles such as "What's it like: To get a rabies shot".

<https://newsok.com/article/3862071/whats-it-like-to-get-a-rabies-shot>

Of course, a vaccination form—whether shared with the bitten party or not—in no way removes the obligation to provide the appropriate response. If the response has to be excessive because the incident was during a flight or at the airport, then so be it, because excessive is better than nothing when some response is required.

What, after all this, is the purpose of the form? It cannot ensure the animal is safe; getting a vaccine does not make an animal safe.

The main purpose of the new vaccination forms appears to be simply creating a new barrier for passengers with disabilities, in hopes that a barrier for the sake of barriers will have a deterrent effect on fraud. The ACAA is supposed to remove barriers to access, not oversee their gratuitous multiplication.

Ultimately, we must weigh the burdens to hundreds of thousands of passengers with disabilities vs. any supposed benefit to requiring these forms in the extremely rare cases of skin-breaking animal bites. It is difficult to see any specific benefit to the forms, while it is very easy to spot their quite significant and undue burdens.

### *§7. Containing emotional support animals in the cabin*

Interim enforcement priorities should not upend major underpinnings of the current system before we have new regulations, even if that upending would theoretically align with our long-term predilections. We are all for requiring that service animals and emotional support animals (ESAs) be tethered (harnessed/leashed)—if not contained in a pet carrier and with reasonable exceptions, such as those that are disability-based.<sup>60</sup> That is common practice and common sense, which we believe would not be a

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<sup>60</sup> See the behavior standard in §1 of our 2016 compromise comment. <https://www.psychdogpartners.org/wp-content/uploads/2016/12/USAUSA-ACAA-SA-Pre-NPRM-Comment.pdf> Here, as there, we compare DOJ's tethering requirement at 28 CFR §36.302(c)(4): "Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means)." Note that this does not strictly require the active use of the tether as the default, though this is arguably intended. [https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&n=28y1.0.1.1.37&r=PART#se28.1.36\\_1302](https://www.ecfr.gov/cgi-bin/retrieveECFR?%20gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&n=28y1.0.1.1.37&r=PART#se28.1.36_1302)

shock for anyone.<sup>61,62</sup>

In order to maintain ESA access in some form,<sup>63</sup> we originated the idea during the Reg Neg of allowing airlines to require that ESAs be contained in pet carriers by default.<sup>64</sup> We remain supportive of this overall idea for a regulation update.<sup>65</sup> However, the practical difficulties of actually implementing this under the current regulations would be too severe to make this a responsible allowance for the interim.

We are grateful DOT now recognizes there is a significant difference between ESAs and psychiatric service animals, as well as understanding some of the nature and consequences of that difference.<sup>66</sup> On the other hand, airline personnel at all ranks still tend not to distinguish ESAs from psychiatric service animals, as most airlines' treatment of the two groups has followed current regulations and been the same.<sup>67</sup> Airlines have therefore had no impetus to disentangle the two concepts and it would require extensive training to expect accurately different handling.

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<sup>61</sup> We note in the same breath both that some handlers drop a shorter leash or harness when their service dogs curl up under the seat and that longer, hands-free leashes do not require a constant grip for constant tethering. As far as the details are concerned, our guiding principles are responsible handler behavior and reasonable enforcement.

<sup>62</sup> In fact, this is already some airlines' policy, which seems to violate DOT's SIEP interpretation of 14 CFR §382.117 as it still pertains to service animals. ("The Enforcement Office then interpreted section 382.117 as prohibiting an airline from requiring service animals to be harnessed in the cabin, and requiring airlines to transport service animals in the cabin free of restraining devices while accompanying users at their seats in accordance with applicable safety requirements since there appeared to be no safety reason to do so.") For airline policy examples, see Delta's "Trained Service Animal Request" form or "Emotional Support/Psychiatric Service Animal Request" form, each of which say: "Service animals must be leashed or otherwise restrained by carrier or tether and remain under the control of their owner for the duration of the flight". <https://www.delta.com/content/dam/delta-www/pdfs/policy/TrainedServiceAnimal-RequiredForms.pdf> <https://www.delta.com/content/dam/delta-www/pdfs/policy/EmotionalSupportAnimal-RequiredForms.pdf>

Also see American's "Service and emotional support animals" page: "Emotional support and service animals must be[...]tethered by leash and / or harness and under your control at all times." <https://www.aa.com/i18n/travel-info/special-assistance/service-animals.jsp>

<sup>63</sup> Much of our community would just as soon see ESA access eliminated, but we pursued and continue to pursue the most reasonable compromise we could.

<sup>64</sup> We *very highly recommend* DOT revisit §2, ESA 1 in "Service Animal Advocate Positions and Reasoning" from September 15, 2016. We took pains there to lay out what would work, what wouldn't, and why. <https://www.transportation.gov/office-general-counsel/negotiated-regulations/service-animals---advocate-position-and-reasoning>

<sup>65</sup> See §3.d. in our 2018 survey report. <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>66</sup> "We recognize the possibility that ESAs may pose greater in-cabin safety risks because they may not have undergone the same level of training as other service animals (including PSAs)." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0019> We elaborate that service animals undergo work or task training, public access training, and are generally quite accustomed to working in a variety of public environments and so have accrued substantial psychological shock absorbers. Any one of these characteristics would be unexpected in the average ESA.

<sup>67</sup> Southwest is a notable exception. See their "Assistance Animal" entry, which does not currently distinguish psychiatric service animals from any other type of service animal: <https://www.southwest.com/html/customer-service/unique-travel-needs/customers-with-disabilities-pol.html>



Suddenly allowing more restrictive policies for ESA users will lead to trouble not just for the fact that airline employees likely will continue to conflate ESAs and psychiatric service animals, nor only for ESA users needing to adjust to even more restrictions. Similar to how airline employees now try to subject service animal users of the non-psychiatric sort to ESA-user treatment, we would also expect any new, harsher ESA barriers to bleed through to affect all service animal users.<sup>68</sup> This especially applies to any service animal user without a disability apparent to the employee or without an animal or breed that matches the employee's prototypical concept of a service animal. The patchwork of airline variations the planned enforcement would open up would further confuse matters on the larger scale.

Since it is clear the sudden ban of larger ESAs would not be appropriate without the usual rulemaking process,<sup>69</sup> an interim change in whether airlines may require pet carriers for smaller ESAs must be a half-measure. We worry that allowing such a half-hearted set of new restrictions would cloud everyone's thinking and the restrictions' execution.

There is not a clear reason why smaller ESAs must be contained, yet larger ESAs need not be. In fact, if training and safety are the reasons to allow ESA containment requirements, one might easily think larger ESAs would present the larger threat. Since the reasoning is not consistent, we would expect airline employees to (justifiably) become confused, thinking that if an ESA does not come with a carrier or can't fit in one, then the person can't fly with the ESA.<sup>70</sup> Connecting with the theme above, some employees might even extend this confusion broadly to all service animals.<sup>71</sup>

We must finally return to another point we made during the Reg Neg. It is not likely that the point of an ESA—one that is needed for disability mitigation on a flight—is going to be served if that ESA must remain in a

<sup>68</sup> We have already received anecdotal reports of the new burdens for ESA and psychiatric service animal users being pushed on guide dog users, just as the old requirements have been. The system cannot handle complexity well.

<sup>69</sup> If DOT were to allow an indirect restriction on ESA size by allowing a requirement that ESAs be transported in pet carriers, the larger-ESA users would deserve a warning period on the order of 2–4 years. This would allow time to either train the ESA to become a service animal and have access, get a smaller ESA, or decide not to use an ESA. ESA users could not be expected to suddenly acquire a new animal as an ESA, as if they were commodities rather than living creatures with personal bonds.

<sup>70</sup> As we originally quipped during the Reg Neg, "can't fit, can't fly". See §2, ESA 1, p. 8: [https://www.transportation.gov/sites/dot.gov/files/docs/P5.SA\\_1.Advocate%20Positions%20and%20Reasoning%20091516%20%28003%29.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/P5.SA_1.Advocate%20Positions%20and%20Reasoning%20091516%20%28003%29.pdf)

<sup>71</sup> Anyone who doubts the depth of confusion or breadth of ignorance possible should read SIEP comments such as one posted May 22, 2018: "Service Animals shall be permitted exclusively for Blind and Deaf Airline travelers.[...]Service Animals shall be restricted to dogs of eight pounds or less." <https://www.regulations.gov/document?D=DOT-OST-2018-0067-0017>

pet carrier.<sup>72</sup> If there were a wholesale restriction to pet carriers for ESAs, as we have proposed, it would be fine for the default to be that ESAs are in pet carriers. However, the user must have access to the ESA on the flight for disability mitigation. This, of course, may give way to being required to replace the ESA in the carrier if there were a behavior issue.

A requirement that ESAs be persistently imprisoned is tantamount to giving small-ESA users mere pet fee exemptions for having disabilities, rather than access to the means to cope with their disabilities. This is quite disparate treatment from that of larger-ESA users. DOT should reconsider the wisdom of allowing ESA containment restrictions in a way such that they will unjustifiably favor some ESA users over others. Regarding the whole ESA containment issue, the meal must be *fully* cooked to be both safe and palatable; half-measures or half-baking won't do, but that's all the interim leaves time for.

### *Conclusion*

If DOT allows airlines to fashion new obstacles for people with disabilities without a genuine critique process involving the rights holders having real power, that would teach airlines that they can steamroll people's rights as they see fit, then let DOT play catch-up. If DOT's approach is simply to pursue whatever the midpoint happens to be between the extreme positions, it would seem the airlines are employing the right strategy to manipulate DOT by shifting the goalpost.

We continue to resist the temptation to act as if DOT can be manipulated in this bazaar-barter way. Instead, we are hopeful that DOT will find the best access system regardless of the pull of the extremes.

We may be upset at having to fight so much for so little, but our approach is not radical. We seek fairness and justice while recognizing the practical manacles of the current regulations and access protocols in place.

Our aim is to have DOT recognize and respect that if we enter an interim peace accord—until the regulation update—to honor the access system of the previous years, then the only fair and just approach is for DOT to disallow the new generation of access barriers some impatient airlines have been constructing. Setting up these new barriers not only undermines DOT's authority, but creates an ACAA abscess by undeniably preventing a

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<sup>72</sup> Again, DOT should revisit §2, ESA 1 in "Service Animal Advocate Positions and Reasoning" from September 15, 2016. <https://www.transportation.gov/office-general-counsel/negotiated-regulations/service-animals---advocate-position-and-reasoning>

shocking portion of people with disabilities from flying.<sup>73</sup>

Sincerely,  
Bradley W. Morris, MA, CPhil  
Director of Government Relations  
on behalf of the Board of Directors,  
Psychiatric Service Dog Partners<sup>74</sup>



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<sup>73</sup> Many details substantiating this are in our 2018 survey report. <https://www.psychdogpartners.org/wp-content/uploads/2018/05/USAUSA-Flight-Access-Survey-Report-May-2018.pdf>

<sup>74</sup> This comment was drafted with assistance from our Board of Advisors, especially Jenine Stanley, who assisted with drafting feedback and data analysis.