No. 25-10606

In the United States Court of Appeals
for the Fifth Circuit

MELISSA SUZETTE ARZU, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF KEVIN GREENIDGE, DECEASED
***Plaintiff-Appellant*,**

v.

AMERICAN AIRLINES, INC.
***Defendant-Appellee*.**

On Appeal from the United States District Court
for the Northern District of Texas
No. 4:24-cv-00433-P, Honorable Mark T. Pittman, Judge Presiding

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UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* FLYERSRIGHTS IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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Supplemental Statement of Interested Parties

Pursuant to Fifth Circuit Local Rules 26.1.1, 28.2.1 and 29.2, *Amicus Curiae* FlyersRights is a nonprofit consumer advocacy organization with no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respectfully submitted,

/s/ Anne M. Johnson
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Attorney for *Amicus Curiae*

To the Honorable Court:

FlyersRights respectfully moves for leave to file the attached Brief of Amicus Curiae in Support of Plaintiff-Appellant and Reversal pursuant to Federal Rule of Appellate Procedure 29(a)(3).

I. Interest of *Amicus Curiae*

FlyersRights is the largest nonprofit airline passenger rights organization in the United States, representing over 60,000 members. Founded in 2007, it advocates for passenger safety, consumer protection for all airline passengers, and transparency in the airline industry. The organization has participated as amicus curiae in numerous federal court cases affecting passenger rights and airline safety, operates a toll-free hotline for airline passengers, publishes online regularly to educate consumers, and maintains a staffed advocacy office in Washington, DC.

FlyersRights represents airline passengers on the FAA Aviation Rulemaking Advisory Committee, regularly files rulemaking petitions and formal comments with the DOT and FAA to advance passenger rights and interests, and files court actions in defense of airline passengers. The organization has particular expertise in cases involving airline safety protocols and the intersection of international aviation law with domestic civil rights protections.[1]

[1] *See* https://flyersrights.org/how-it-started, visited by the author on August 4, 2025 at 858PM PDT; *see also* Brief of FlyersRights as Amicus Curiae in Support of Respondent, *Dep't of Homeland Sec. v. MacLean*,

II. Relevance and Distinctive Contribution of Proposed Brief

This case presents critical questions about airline accountability when crew members violate emergency response protocols during a passenger's medical crisis. The proposed amicus brief offers a unique analytical framework demonstrating how the District Court's ruling violates both the Montreal Convention and the Air Carrier Access Act (ACAA).

A. Dual Legal Framework Analysis

Unlike the parties' anticipated briefs, which focus primarily on Montreal Convention jurisprudence, FlyersRights' brief demonstrates how this case sits at the intersection of international aviation law and federal civil rights protections. The brief shows how the District Court's decision creates a discriminatory framework that violates 49 U.S.C. § 41705(a) and 14 CFR § 382.11 by effectively sanctioning different levels of emergency care based on passenger medical conditions. It also analyzes Montreal Convention jurisprudence through the lens of ACAA and the legislative objectives of the ACAA.

No. 13-894 (U.S. Sept. 29, 2014); *see also* "FlyersRights Reports Passage of Airline Passengers' Bill of Rights," AVIATION PROS (Feb. 9, 2012) at: https://www.aviationpros.com/home/news/10436845/flyersrights-reports-passage-of-airline-passengers-bill-of-rights; see also https://flyersrights.org/petition; *see also* U.S. Secretary of Transportation Elaine L. Chao Announces Appointees to Aviation Rulemaking Advisory Committee | Federal Aviation Administration at https://www.faa.gov/newsroom/us-secretary-transportation-elaine-l-chao-announces-appointees-aviation-rulemaking?newsId=24295 (FAA October 10, 2019 Press release announcing Aviation Rulemaking Advisory Committee ("ARAC") appointees, and specifically listing Paul Hudson, President, Flyersrights.org, as a re-appointed member of the ARAC).

B. ACAA as Objective Evidence of "Accident"

The proposed brief also makes a novel legal argument that prima facie ACAA violations provide objective evidence of "unusual or unexpected" conduct under *Air France v. Saks*, 470 U.S. 392, 405 (1985). Building on *Olympic Airways v. Husain*, 540 U.S. 644, 652-53 (2004)—which held that conduct "contrary to industry practice and company policy" constitutes an accident—the brief argues that conduct violating federal civil rights statutes (where said statutes specifically protect air travelers) *a fortiori* meets the accident standard. This approach is consistent with *Husain* and provides courts with clear, objective criteria for accident determinations without subjective assessments based on passenger characteristics.

C. Civil Rights Enforcement Context

The brief provides critical current event context highlighting the Department of Transportation's recent $50 million enforcement action against American Airlines for systematic ACAA violations involving unsafe assistance and protocol failures. This enforcement history demonstrates that the conduct at issue may be part of a documented pattern or practice of discrimination rather than isolated protocol deviations, supporting both the accident analysis and establishing the broader civil rights implications.

D. Impact on Protected Classes

The brief addresses the intersection of medical conditions with other protected characteristics, noting that disabling obesity disproportionately affects racial and ethnic minorities and lower socioeconomic groups. *See* Petersen R, Pan L, Blanck HM, *Racial and Ethnic Disparities in Adult Obesity in the United States*, Prev Chronic Dis 2019;16:180579. This intersectional analysis demonstrates how the District Court's ruling creates disparate impacts on disabled communities—a perspective unique to FlyersRights' advocacy mission.

E. Passenger Safety Advocacy Perspective

As the voice of 60,000+ airline passengers, FlyersRights brings practical experience with emergency protocol failures and their disproportionate impact on vulnerable passengers. The organization's advocacy work provides insight into how the District Court's ruling threatens the safety expectations of millions of Americans with chronic health conditions (which affects over 60% of Americans), obesity (which affects over 40% of adult Americans), diabetes (which affects an estimated 38 million Americans), and asthma (which affects an estimated 28 million Americans).

III. Consistency with Fifth Circuit Precedent

The proposed brief demonstrates how its analysis aligns with existing Fifth Circuit precedent in *Blansett v. Continental Airlines, Inc.*, 379 F.3d 177, 182 (5th Cir. 2004), and *White v. Emirates Airlines, Inc.*, 493 Fed. App'x 526, 534 (5th Cir. 2012), while extending those cases' reasoning to civil rights violations. Unlike *Blansett* (where the airline's conduct had legitimate safety justifications) and *White* (where the crew provided substantial assistance despite constraints), this case involves systematic abandonment of multiple protocols with no legitimate operational justification, and the impact which these violations had on a medically vulnerable, disabled passenger—conduct that violates federal civil rights law.

IV. Consent and Timeliness

The undersigned counsel for FlyersRights[2] has contacted counsel for all parties to this appeal, and all parties have stated that they do not oppose the filing of FlyersRights' amicus brief. As a result, FlyersRights does not anticipate that any opposition will be filed. This motion is timely filed within 7 days of the filing of Plaintiff's principal brief, in accordance with Fifth Circuit Local Rule 29.1.

[2] Lead author of this brief, Sanjiv N. Singh, J.D., M.D. is an aviation litigator with a medical degree and significant clinical experience who receives no consultancy fees from any special interest group, healthcare entity, or travel health company. The undersigned counsel have provided their services in this matter on a *pro bono* basis to *Amicus Curiae*.

V. Word Count and Compliance

The proposed amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) and Fifth Circuit Local Rule 29.3, containing approximately 6426 words, and offers substantive analysis that will assist the Court without unnecessarily duplicating the parties' arguments.

Conclusion and Prayer

In sum, the proposed amicus brief will assist the Court by:

- Providing a comprehensive analysis of how Montreal Convention accident determinations intersect with federal civil rights law;
- Offering objective legal standards for accident analysis that eliminate subjective passenger-based assessments;
- Demonstrating the broader implications for airline accountability and passenger safety; and
- Contextualizing this case within DOT's ongoing ACAA enforcement efforts against American Airlines.

For these reasons, FlyersRights respectfully requests that the Court grant leave to file the attached amicus brief in support of Plaintiff-Appellant and reversal.

Respectfully submitted,

Dated: August 20, 2025

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of FED. R. APP. P. 27(d)(2) because it contains 1107 words, excluding parts exempted by FED. R. APP. P. 32(f). This motion complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Anne M. Johnson
Anne M. Johnson

Attorney for *Amicus Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2025, I electronically filed the foregoing with the Clerk of Court using CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Anne M. Johnson
Anne M. Johnson

Attorney for *Amicus Curiae*

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Pursuant to Fifth Circuit Local Rules 26.1.1, 28.2.1 and 29.2, *Amicus Curiae* FlyersRights is a nonprofit consumer advocacy organization with no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

As the largest nonprofit airline passenger rights organization in the United States representing over 60,000 members, FlyersRights is uniquely positioned to provide critical insight to the Court in the resolving this case. Founded in 2007, FlyersRights advocates for passenger safety, consumer protection for all airline passengers, and transparency in the airline industry. The organization has participated as amicus curiae in numerous cases affecting passenger rights and airline safety. It operates a toll-free hotline for airline passengers, publishes online regularly to educate consumers, and operates a staffed office for advocacy in Washington, DC. FlyersRights also represents airline passengers on the FAA Aviation Rulemaking Advisory Committee, regularly files rulemaking petitions and formal comments with the DOT and FAA to advance passenger rights and interests, and files court actions in defense of airline passengers.[1]

[1] *See* https://flyersrights.org/how-it-started, visited by the author on August 4, 2025 at 858PM PDT; *see also* Brief of FlyersRights as Amicus Curiae in Support of Respondent, *Dep't of Homeland Sec. v. MacLean*, No. 13-894 (U.S. Sept. 29, 2014); *see also* "FlyersRights Reports Passage of Airline Passengers' Bill of Rights," AVIATION PROS (Feb. 9, 2012) at: https://www.aviationpros.com/home/news/10436845/flyersrights-reports-passage-of-airline-passengers-bill-of-rights; see also https://flyersrights.org/petition; *see also* U.S. Secretary of Transportation Elaine L. Chao Announces Appointees to Aviation Rulemaking Advisory Committee | Federal Aviation Administration at https://www.faa.gov/newsroom/us-secretary-transportation-elaine-l-chao-announces-appointees-aviation-rulemaking?newsId=24295 (FAA October 10, 2019 Press release announcing Aviation Rulemaking Advisory Committee ("ARAC") appointees, and specifically listing Paul Hudson, President, Flyersrights.org, as a re-appointed member of the ARAC).

FlyersRights brings a unique, informed amicus perspective to this case involving the death of a minor passenger with obvious disability and/or disabling medical conditions on an airplane in the wake of multiple apparent breaches of protocol by American Airlines. As the voice of passengers, free from industry influence, amicus is focused solely on protecting the flying public. This case presents critical questions about airline accountability that sit at the intersection of international aviation law and domestic civil rights protections:

- Can an airline escape liability under the Montreal Convention when its crew violates multiple emergency response protocols in responding to a passenger with a preexisting medical condition, resulting in death?
- Equally important, can such conduct be excused when it simultaneously flouts the equal rights of passengers protected under the 1986 Air Carrier Access Act (ACAA), which statute and its promulgated regulations expressly prohibit discrimination against passengers with disabilities in air transportation?

The District Court, in its ruling, has effectively answered yes to both questions, granting summary judgment to American Airlines despite evidence that the crew failed to follow four separate emergency protocols while fourteen-year-old Kevin Greenidge lay dying. This ruling should not stand.

FlyersRights submits that the District Court's ruling not only misapplies Montreal Convention precedent but also violates fundamental principles of the ACAA and its implementing regulations. This dual violation—of both international treaty obligations and longstanding domestic civil rights law—creates a discriminatory framework that American Airlines seeks to exploit at the expense of passengers with medical conditions.

The Montreal Convention represents a carefully negotiated treaty compromise that deviates from common law's traditionally higher duty of care for common carriers in exchange for providing universal passenger protections through strictly applicable safety protocols. Airlines cannot cherry-pick the benefits of this international framework—claiming immunity from common law tort duties while simultaneously avoiding the Convention's universal protection requirements through discriminatory application. Under the Airline Deregulation Act of 1978, airlines already enjoy broad civil immunity from state and local consumer protection laws for conduct not involving death or personal injury.

The District Court's decision effectively grants airlines immunity from both common law duties and Montreal Convention obligations by permitting protocol violations based on passenger characteristics—a result that violates the treaty's

fundamental reciprocal structure and creates impunity where international law intended accountability.

Accordingly, FlyersRights urges this Court to reverse for three reasons. *First*, the District Court misapplied the definition of "accident" under the Montreal Convention and flouted the ACAA by focusing on Kevin's medical conditions rather than the crew's unexpected protocol violations. *Second*, the court improperly conflated the separate inquiries of accident and causation, violating Supreme Court precedent and the spirit if not letter of the ACAA by furthering the inappropriate focus on the individual passenger's medical condition. *Third*, and perhaps most importantly from the vantage of this amicus, the ruling itself creates an expressly discriminatory framework that denies equal protection to passengers with medical conditions, threatening the safety of millions of passengers who rely on competent emergency response during air travel.

STATEMENT OF COMPLIANCE WITH RULE 29(A)(4)(E)

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund preparing or submitting this brief. No person other than *Amicus curiae*, its members, or its counsel contributed money intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief. Lead author of this brief, Sanjiv N. Singh, J.D., M.D. is an aviation litigator also with a medical degree and significant clinical experience, however he receives no consultancy fees from any special interest group, healthcare entity, or travel health company. The undersigned counsel provided their services in this matter on a pro bono basis to *Amicus curiae*.

SUMMARY OF ARGUMENT

The District Court's decision fundamentally misinterprets and misapplies the Montreal Convention and threatens passenger safety while flouting the protections of the ACAA. Under Supreme Court precedent, an "accident" is "an unexpected or unusual event or happening that is ***external to the passenger***." *Air France v. Saks*, 470 U.S. 392, 405 (1985). Consistent with this, the ACAA expressly prohibits airlines from discriminating against passengers with disabilities in the provision of air transportation. Under the ACAA, specifically 49 U.S.C. § 41705(a), air carriers "may not discriminate against an otherwise qualified individual" with a disability, and the implementing regulations at 14 CFR § 382.11 explicitly prohibit carriers from discriminating "against any qualified individual with a disability, by reason of such disability, in the provision of air transportation."

Despite this, the District Court here improperly looked at the ***internal*** conditions of the passenger to determine whether there was an accident, and sanctioned American's discriminatory conduct by treating protocol violations as excusable when the passenger has medical conditions. By treating American's protocol violations as excusable rather than discriminatory, the District Court's decision directly contravenes both the ACAA's implementing regulations and Congressional mandates for disability accommodation in air travel. The decision

ignores 14 CFR § 382.11(b)'s requirement that carriers provide assistance "in a safe and dignified manner" as well as Section 440 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254, § 440, 132 Stat. 3347) directing the Department of Transportation to ensure passengers with disabilities receive "dignified, timely, and effective assistance."

Accordingly, based on the Montreal Convention and the ACAA, this Court should reverse the District Court's ruling for three reasons.

First, American Airlines' multiple protocol violations clearly constitute an "accident." When emergency procedures mandate immediate cockpit notification, immediate CPR, physician consultation, and organized response roles, the failure to follow any—let alone all—of these protocols is inherently unusual and unexpected ***regardless of the passenger's preexisting medical conditions***. Concluding otherwise flouts both the Convention and the ACAA.

Second, the District Court improperly considered Kevin's medical conditions when determining whether an accident occurred. The Supreme Court, in *Olympic Airways v. Husain*, 540 U.S. 644 (2004), makes it clear that accident analysis and causation analysis are separate inquiries, and this distinction is entirely consistent with the protections afforded by the ACAA. The passenger's health is relevant to

causation, not to whether the crew's conduct or failure to follow protocol was unusual.

Third, the ruling by the District Court upholds and authorizes American's unlawful discrimination and thereby tramples on what should be the equal rights of passengers embodied by the ACAA. By suggesting protocol violations become "expected" for passengers with medical conditions, the lower court's decision here allows American Airlines to deny equal protection of the ACAA to the majority of Americans who have chronic health conditions.

ARGUMENT

On its face, this case may appear to be yet another Montreal Convention case. It is true that a core legal issue for the Court is whether American Airlines' failure to follow multiple emergency medical protocols during a passenger's fatal medical event constitutes an Article 17 "accident" under the Montreal Convention. But the District Court's ruling improperly considered the passenger's pre-existing conditions for its accident analysis and suggested protocol violations are somehow "expected" for medically vulnerable passengers, thereby creating a discriminatory standard that violates the ACAA and denies equal protection to millions of Americans with chronic health conditions.

I. The District Court Erred in Finding No "Accident" and Using Kevin's Health as a Scapegoat.

The District Court's finding that multiple emergency protocol violations do not constitute an "accident" cannot be reconciled with controlling precedent and threatens passenger safety across the aviation industry. The Court essentially condoned American Airlines' use of Kevin's individual health as a scapegoat and flouts the ACAA in doing so.

A. Legal Standard: Article 17 Accident Analysis Is Consistent with the ACAA.

The Montreal Convention imposes liability on carriers for passenger death or injury caused by an "accident" during international flights. Montreal Convention art. 17. The Supreme Court has defined "accident" as "an unexpected or unusual event or happening that is external to the passenger." *Air France v. Saks*, 470 U.S. 392, 405 (1985). Critically, in *Saks*, the Supreme Court emphasized that this definition should be "***flexibly applied*** after assessment of all the circumstances surrounding a passenger's injuries." *Id.* (emphasis added). The Court further clarified that "[a]ny injury is the product of a chain of causes," requiring only that "some link in the chain was an unusual or unexpected event external to the passenger." *Id.* at 406. The exhortation of "flexible" assessment and emphasis on "link-in-chain" analysis is entirely synchronous with the requirements of the ACAA; a flexible, link-in-chain

standard ensures that no passenger's injuries should preclude them from benefitting from safety protections provided by following basic protocol.

Federal courts have consistently recognized that violations of airline protocols and industry standards can constitute accidents under this framework. In *Fulop v. Malev Hungarian Airlines*, 175 F. Supp. 2d 651, 665 (S.D.N.Y. 2001), the Southern District of New York held that an airline's failure to follow emergency medical protocols constituted an accident, reasoning that passengers "reasonably would expect that ... airlines rendering services as common carriers would be particularly scrupulous and exacting in complying with their own industry norms, internal policies and procedures …." 175 F. Supp. 2d 651, 665 (S.D.N.Y. 2001). Multiple courts from other districts have recognized that an Article 17 accident can occur where there is a failure to warn, assist, or render adequate medical attention, including to a passenger with a pre-existing medical condition. *See, e.g.*, *Bintz v. Continental Airlines, Inc*., No. CV 4:13-0566, 2016 WL 6906901, at *5 (S.D. Tex. Mar. 3, 2016) (holding that, in the setting of a passenger with heart attack, "an injury resulting from routine procedures ... can be an 'accident' if those procedures or operations are carried out in an unreasonable manner"); *Sook Jung Lee v. Korean Air Lines Co*., 2012 WL 1076269 at *7 (C.D. Cal. 2012) (no accident was found based on undisputed facts the airline had followed protocol in the setting of a passenger

with a heart attack); *Watts v. American Airlines*, 2007 WL 3019344 at *3-4 (S.D. Ind. Oct. 10, 2007) (court found accident where "American Airlines' unusual or unexpected failure to recognize and/or respond to [passenger's] heart attack, and its failure to conform to industry custom and practices by responding to his medical emergency, could constitute a link in the chain of the events causing the ill-fated 'accident' on board"); *see also Bunis v. Israir GSA, Inc*., 511 F. Supp. 2d 319, 323 (E.D.N.Y. 2007) (disabled passenger could be the victim of accident alleged to have occurred on disembarking from a plane).

As noted in Plaintiff's brief to the District Court, multiple district courts have also found accidents under the Montreal Convention in non-medical settings. *See, e.g.*, *Krystal v. British Overseas Airways Corp*., 403 F. Supp. 1322, 1324 (C.D. Cal. 1975) (aircraft hijacking); *Evangelinos v. Transworld Airlines, Inc*., 550 F.2d 152, 156-58 (3d Cir. 1977) (terrorist attack); *Wallace v. Korean Air*, 214 F.3d 293, 299 (2d Cir. 2000) (sexual assault); *Kantonides v. KLM Royal Dutch Airlines*, 802 F. Supp. 1203, 1209 (D.N.J. 1992) (injury on walkway in airport); *Chutter v. KLM Royal Dutch Airlines*, 132 F. Supp. 611, 613 (S.D.N.Y. 1955) (injury on boarding ramp); *McCarthy v. Northwest Airlines, Inc*., 862 F. Supp. 17, 20 (D. Mass. 1994) (injury on airport escalator); *Diaz Lugo v. American Airlines, Inc*., 686 F. Supp. 373, 375 (D.P.R. 1988). While these non-medical cases do not deal with a passenger's

individualized medical condition or disability per se, they do emphasize the "external to the passenger" standard of *Saks* which is also, not surprisingly, consistent with the ACAA's equal protection of all passenger rights.

In *McCaskey v. Continental Airlines, Inc*., the U.S. District Court in the Southern District of Texas acknowledged that, even where the injury itself was not caused by an accident, "an airline's post-injury conduct can constitute an accident" under the Convention. 159 F. Supp. 2d 562, 574 (S.D. Tex. 2001). This too is also consistent with the ACAA's equal protection of all passenger rights because it appropriately shifts focus away from the passenger's individual conditions (including medical conditions and disabilities) to the conduct of the carrier.

This Court has on at least two separate occasions addressed the relevance of protocol violations to the accident analysis and done so in a manner consistent with the ACAA. In *Blansett v. Continental Airlines, Inc*., this Court held that while not every protocol violation automatically constitutes an accident, "some departures from an 'industry standard' might be qualifying accidents under Article 17." 379 F.3d 177, 182 (5th Cir. 2004). This Court emphasized that the inquiry depends on whether the departure was unusual or unexpected under the circumstances. *Id.* Most notably, the court concluded that the airline's "failure" to warn about deep vein thromboses or so called "DVTs" (and encourage getting up to walk around) was not

an accident for the obvious reason that many airlines did not make such a warning because a competing safety concern required passengers to be seated whenever possible. *Id.* Amicus notes that the facts of this case and ruling are entirely consistent with Montreal Convention jurisprudence and the ACAA. ***All passengers*** are at risk for a DVT if they remain immobilized, but ***all passengers*** are also arguably more at risk for injury if they are not seated and severe unexpected turbulence were to occur.

In *White v. Emirates Airlines, Inc*., this Court extended *Blansett* to consider violations of internal airline policies, not just industry standards. 493 F. App'x 526, 534 (5th Cir. 2012). Importantly, *White* found no accident where the crew "took action to assist" the passenger and noted that the crew was constrained by the fact the plane was in the critical descent phase, ***not by any particular characteristic of the passenger***. *Id.* The Court also observed that even with those challenging circumstances, the crew still managed to follow many protocols and provided oxygen, moved the passenger to the floor, and arranged ground transport. *Id.* at 531. It was ***not*** a case where the crew failed to take required actions altogether, or failed to follow multiple parts of their own emergency response protocol, and then explained it away by pointing to the passenger's health or disability.

B. American Airlines' Multiple Protocol Violations Were Unexpected and Unusual Under Controlling Precedent, and Their Scapegoating of Kevin Was Discriminatory.

Applying the foregoing authorities, including *Blansett* and *White*, the undisputed facts establish that American Airlines' crew violated four separate emergency protocols, which therefore clearly constituted an accident under the Montreal Convention. American's conduct, including their implicit and/or express scapegoating of Kevin's obesity and medical condition clearly violate the equal protection rights of all passengers as set forth in the ACAA.

1. First Violation: Failure to Immediately Notify Flight Deck.

American's Inflight Manual requires flight attendants to "immediately" notify the flight deck upon discovering a serious medical emergency. ROA.1984. That did not occur here. Instead, the crew waited until after Kevin was moved to the galley, after volunteer medical professionals finally initiated CPR due to delay in moving him, and after the faulty AED was deployed. ROA.1981. Inconsistent with passenger rights under the ACAA, Kevin did not receive the same notification-of-flight-deck response afforded to other passengers.

2. Second Violation: Failure to Immediately Administer CPR.

American's Inflight Manual also mandates that CPR be "administered immediately" to an unconscious passenger who is not breathing. ROA.1991. Yet the crew waited for passenger volunteers, leaving Kevin in his seat for a prolonged period of time while "nothing was really…done." ROA.1981. Every minute without

CPR dramatically reduces survival chances—a fact reflected in the FAA's Advisory Circular emphasizing the need for "early CPR."[2] Plaintiff expert's testified as to the role delayed CPR would play in the context of pediatric cardiac arrest. ROA.1982-1983. Inconsistent with passenger rights under the ACAA, Kevin did not receive the same prompt, life-saving CPR which other passengers are afforded.

3. Third Violation: Failure to Contact Physician on Call.

American's Inflight Manual requires the crew to contact the physician on call (POC) during Code Red emergencies. ROA.1992. These physicians provide specialized guidance for aviation medical emergencies. The crew never made this call. *Id.* This violation is particularly egregious given that the Manual explicitly states to "Continue to contact the POC, even if a medical professional is on board." ROA.1991. Inconsistent with passenger rights under the ACAA, Kevin, unlike other passengers, did not have the benefit of a physician on call consulting on his care and condition.

4. Fourth Violation: Failure to Establish Emergency Team Roles.

American's Inflight Manual required the responding crew during Kevin's emergency to have and follow defined roles—communicator, responder, and runner—as one would expect during medical emergencies. ROA.1992. Instead, one

[2] *See* FAA AC 121-34B at p. 3.

flight attendant was "panicky" and "frazzled," leading to confusion and delays and ultimately to there being only one lone responder from the crew actually providing care. *Id.* One lone responder in a response that would require CPR and administration of the AED rendered the response grossly ineffective. *Id.* Inconsistent with passenger rights under the ACAA, Kevin, unlike other passengers, did not have the benefit of a full and complete response team and effectively had only one crew member actually attending to him.

Under 14 CFR § 382.11, air carriers are explicitly prohibited from discriminating "against any qualified individual with a disability, by reason of such disability, in the provision of air transportation." When American's crew systematically failed to follow emergency protocols while Kevin struggled with breathing difficulties, and with the apparent blessing of the Court, point to his preexisting medical condition and habitus as an excuse, they engaged in precisely the type of discriminatory conduct that federal law prohibits. In view of the ACAA, the Supreme Court's decision in *Olympic Airways v. Husain* is instructive and worth revisiting when a District Court seems to have so obviously ignored the rights of flyers with this ruling. Recall that in *Husain* the Court found an accident where flight attendants refused three requests to help an asthmatic passenger move away from smoke. 540 U.S. 644, 656 (2004). If three refusals to provide simple assistance to a

patient with a known asthma condition constitute an accident, surely four failures to follow emergency medical procedures for the young Kevin, whether suffering from childhood obesity or otherwise afflicted, do as well.

C. The District Court Improperly Focused on Kevin's Medical Conditions Rather than the Crew's Conduct.

The District Court acknowledged these protocol violations but concluded they did not constitute an accident because "Kevin's underlying conditions also suggest that the flight crew's response was not unusual or unexpected." ROA.2267. This reasoning is legally erroneous, and a fundamental departure from universal canons of accident analysis. As the *Saks* court noted, the "passenger's own internal reaction" only enters the analysis if there was "usual, normal, and expected operation of the Aircraft." *Saks*, 470 U.S. 392, 406 (1985). Otherwise, the accident inquiry under *Saks* focuses exclusively on whether the event was "external to the passenger"—that is, whether the airline's conduct was unusual or unexpected. 470 U.S. at 405. In other words, the Supreme Court has made it clear that the passenger's internal condition is irrelevant to this threshold determination. As Judge Pooler explained in her *Wallace* concurrence, courts should not "add more hurdles for a plaintiff to overcome" beyond the *Saks* definition. *Wallace v. Korean Air*, 214 F.3d 293, 300 (2d Cir. 2000).

The District Court's approach does exactly that, adding more "hurdles" for the common passenger plaintiff to overcome and creating an untenable situation where crew obligations vary based on passenger appearance, habitus and health. The following kind of dangerous thinking looms over the horizon of the District Court's decision: ***Can flight attendants skip or improperly delay CPR for obese passengers? Can they delay epinephrine for a similarly disabled passenger having an allergic reaction?*** Such discriminatory medicalization of the accident inquiry transforms crews into diagnostic personnel, deciding which passengers deserve full protocol compliance, and renders the uniform protection of the Montreal Convention available only to the healthiest of passengers, leaving the disabled and/or chronically ill passengers stranded in a grey zone of unsafety. Moreover, American knew of Kevin's conditions before takeoff—he waited at the gate in a wheelchair. ROA.1985. Under the ACAA's implementing regulations at 14 CFR § 382.11(b), carriers must provide assistance "in a safe and dignified manner" to passengers with disabilities. If Kevin's size or health truly "could compromise the effectiveness of any emergency medical procedures," American should have required a safety assistant or medical clearance under existing ACAA protocols. ROA.2026 (where Plaintiff Appellant's expert who worked for American for 39 years and wrote many of their safety policies specifically states, "To determine if a passenger should travel with a Safety Assistant,

airlines adhere to the implementing guidelines for the Air Carrier Access Act (ACAA).") Having accepted him for transport without such accommodations, American cannot now claim his conditions excused their systematic protocol violations. This approach directly contravenes the ACAA's fundamental principle that airlines must provide equal service to all passengers, regardless of disability status.

II. The District Court Committed Legal Error by Injecting Causation Analysis into the Accident Determination.

Article 17 accident analysis and causation analysis are distinct inquiries under the Montreal Convention. This separation is not merely semantic but fundamental to the Convention's liability structure, and fundamental to upholding passenger rights under the ACAA.

A. Supreme Court Precedent and Plain English Interpretation of the Treaty Mandates Separate Accident and Causation Inquiries.

In *Saks*, the Supreme Court defined "accident" without any reference to causation or the passenger's condition. 470 U.S. at 405. The definition asks only whether an "unexpected or unusual event" occurred that was "external to the passenger." *Id.* Consistent with the ACAA, notably absent is any inquiry into whether the passenger's condition contributed to injury. *Husain* reinforces this separation with crystal clarity. The Supreme Court first determined that the flight

attendants' refusal to assist constituted an accident, focusing solely on their conduct. 540 U.S. at 656. Only after establishing an accident did the Court turn to causation, finding the refusal was "a link in the chain" of causes leading to death. *Id.* at 657. The *Husain* Court's two-step analysis is instructive:

- Step One (Accident): Was the crew's refusal to assist unusual or unexpected? Yes.
- Step Two (Causation): Was this refusal a link in the chain causing death? Yes.

At no point did the Court in *Husain* consider whether the passenger's severe asthma made the crew's refusal more "expected." The passenger's medical condition was relevant only to the second inquiry—causation.

This separation of inquiries is particularly crucial in view of the ACAA. The Supreme Court's analysis in *Husain* mirrors the ACAA's plain language and significance. Under the ACAA, specifically 49 U.S.C. § 41705(a), air carriers "may not discriminate against an otherwise qualified individual" with a disability, and the implementing regulations at 14 CFR § 382.11 explicitly prohibit carriers from discriminating "against any qualified individual with a disability, by reason of such disability, in the provision of air transportation." By conflating accident and causation, the District Court not only violated Montreal Convention precedent but

also undermined the ACAA's anti-discrimination framework, which requires objective evaluation of airline conduct without reference to passenger characteristics.

B. The District Court's Conflation of These Inquiries Violates *Husain, Saks,* and the ACAA.

The District Court's statement that "Kevin's underlying conditions also suggest that the flight crew's response was not unusual or unexpected" represents precisely the analytical error *Husain* prohibits and precisely the kind of discriminatory conduct the ACAA forbids. Under the District Court's logic, the asthmatic, diabetic, elderly, or obese, among many other medically vulnerable and disabled groups, fly at their own risk in a world where protocols can be flouted. This approach also transforms the objective, foundational *Saks* standard—was the airline's conduct unusual or unexpected?—into a subjective inquiry that varies by passenger. Such medicalization and/or individualization of the accident analysis finds no support in Supreme Court precedent.

III. The District Court's Analysis Creates an Unlawful Discriminatory Framework That Denies Equal Protection to Passengers with Medical Conditions.

The Montreal Convention draws no distinctions between passengers based on health status. Article 17's protections apply to all passengers on international flights, regardless of their medical conditions. To interpret the treaty otherwise creates

classifications nowhere found in its text or legislative history and violates the ACAA.

A. The Montreal Convention Protects All Passengers Equally.

The Convention's preamble emphasizes "the importance of ensuring protection of the interests of consumers in international carriage by air." Montreal Convention, pmbl. This consumer protection purpose is universal and not reserved for only able-bodied consumers with "normal" body habitus—it does not create exceptions for passengers with diabetes, obesity, or asthma. Moreover, multiple circuits recognize that the Montreal Convention "replaced the pro-airline industry regime with a treaty that favors passengers rather than airlines." *Doe v. Etihad Airways*, P.J.S.C., 870 F.3d 406, 422-23 (6th Cir. 2017). Creating health-based exceptions to accident liability would resurrect the airline-protective regime the Convention sought to eliminate.

B. The District Court's Decision Directly Violates the ACAA.

The District Court's ruling represents more than a misinterpretation of international treaty law—it constitutes judicial endorsement of conduct that violates express federal civil rights protections. The ACAA and its implementing regulations create binding legal obligations that American Airlines systematically violated in this case. *See* 49 U.S.C. § 41705(a); *see also* 14 CFR § 382.11. By suggesting

protocol violations become "expected" for passengers with medical conditions, American Airlines, with the District Court's blessing, effectively creates two classes of passengers:

- Class One: Healthy passengers who receive full emergency protocol compliance.
- Class Two: Passengers with medical conditions for whom protocol violations are "expected" or permitted.

This discriminatory application of the Montreal Convention will have profound impact on millions of Americans:

- Over 60% of Americans have at least one chronic medical condition;[3]
- 40% of American adults have obesity;[4]
- 38 million Americans have diabetes;[5] and
- 28 million Americans have asthma.[6]

[3] Centers for Disease Control and Prevention. About Chronic Diseases. Updated October 4, 2024. Available at: https://www.cdc.gov/chronic-disease/about/index.html.

[4] Centers for Disease Control and Prevention, National Center for Health Statistics. Obesity and Severe Obesity Prevalence in Adults: United States, August 2021–August 2023. NCHS Data Brief No. 508. Available at: https://www.cdc.gov/nchs/products/databriefs/db508.htm.

[5] Centers for Disease Control and Prevention. National Diabetes Statistics Report. Updated July 23, 2024. Available at: https://www.cdc.gov/diabetes/php/data-research/index.html.

[6] Centers for Disease Control and Prevention. Asthma Surveillance in the United States, 2001–2021. National Center for Environmental Health. 2023. Available at: https://www.cdc.gov/asthma/asthma-prevalence-us-2023-508.pdf; Asthma and Allergy Foundation of America. Asthma Facts. Updated April 23, 2025. Available at: https://aafa.org/asthma/asthma-facts/.

Under the District Court's framework, airlines could provide substandard emergency care to the majority of passengers and escape liability by citing their conditions. This discriminatory framework finds no support in federal law. The Department of Transportation recently issued a $50 million enforcement action against American Airlines for systematic ACAA violations involving unsafe assistance and protocol failures, demonstrating that such conduct constitutes a "pattern or practice of discrimination" that federal regulators actively prosecute.[7] The District Court's decision thus not only contradicts established federal civil rights law but also actively facilitates the very type of systematic discrimination against disabled passengers that Congress specifically intended to prohibit when it enacted the ACAA. Indeed, the District Court's ruling effectively sanctions a clear violation of the Air Carrier Access Act by endorsing American Airlines' failure to follow mandated protocols as a mitigating circumstance. Under 49 U.S.C. § 41705(a), air carriers "may not discriminate against an otherwise qualified individual" with a disability, and the implementing regulations at 14 CFR § 382.11 explicitly prohibit carriers from discriminating "against any qualified individual with a disability, by reason of such disability, in the provision of air

[7] https://www.transportation.gov/briefing-room/dot-issues-landmark-50-million-penalty-against-american-airlines-its-treatment (DOT Issues Landmark $50 Million Penalty Against American Airlines for Its Treatment of Passengers with Disabilities | US Department of Transportation).

transportation." By treating American's protocol violations as excusable rather than discriminatory, the court's decision directly contravenes both the ACAA's implementing regulations and Congressional mandates for disability accommodation in air travel. The decision ignores 14 CFR § 382.11(b)'s requirement that carriers provide assistance "in a safe and dignified manner" as well as Section 440 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254, § 440, 132 Stat. 3347) directing the Department of Transportation to ensure passengers with disabilities receive "dignified, timely, and effective assistance."

The District Court's ruling thus not only contradicts established federal civil rights law but in fact actively facilitates the very type of systematic discrimination against disabled passengers that Congress specifically intended to prohibit when it enacted the ACAA.

C. Prima Facie ACAA Violations Set the Stage for Dispositive Application of *Husain*.

Of equal importance and connecting the ACAA violations to Montreal Convention jurisprudence, recall that the Supreme Court in *Olympic Airways v. Husain*, 540 U.S. 644, 648, 652-53 (2004), expressly held that airline conduct "in blatant disregard of industry standards and airline policies" and "contrary to industry practice and company policy" constitutes an "unexpected or unusual event" under the Montreal Convention accident standard, establishing that regulatory and policy

violations provide objective evidence of unexpected conduct. As such, in the same manner, the prima facie ACAA violations here should almost ***require*** finding of an Article 17 accident. Here we have airline conduct that is not merely "contrary to industry practice and company policy" but which is contrary to, if not an outright violation of, a federal statute and its enabling regulations under the Department of Transportation. And the conduct in question is by the same airline with a rampant record of ACAA violations requiring DOT enforcement and fines. As such, in view of the ACAA violations (which the District Court ironically highlighted in its attempt to excuse American's conduct as "expected" by pointing to Kevin's health condition), this Circuit ***must*** follow *Husain* and reverse the District Court's decision. This approach ensures consistency between international treaty obligations and domestic civil rights law while providing courts with objective criteria for accident determinations.

D. The District Court's Ruling Sets Dangerous Precedent for Disparate Impact of Disabled Passengers.

Consider the intersection of Kevin's physical characteristics at issue in this case with other protected characteristics. Historical data shows that obesity disproportionately affects certain racial and ethnic minorities and those of lower

socioeconomic status.[8] By making obesity relevant to the accident analysis, the District Court's ruling has disparate impacts on disabled passengers. Amicus urges the Court to consider the profound impact the District Court's decision will have on the flying rights of disabled passengers.

E. The Montreal Convention's Drafting History Confirms Its Consumer-Protective Purpose and Is Consistent with the ACAA.

The Montreal Convention represents a significant achievement for U.S. aviation policy, with the U.S. delegation at the diplomatic conference achieving "all of America's core objectives" in creating a more passenger-protective regime. S. Exec. Rep. No. 108-8, at 3 (2003). The Convention was designed to eliminate the patchwork of airline liability regimes and replace them with uniform rules that increased passenger protection compared to the inadequate Warsaw Convention system. *Id.* at 2-3. Significantly, the negotiating history reflects no intention to create health-based exceptions to airline liability, with delegates instead focusing on creating a comprehensive liability framework that would provide fair compensation while preserving a balance of interests. *See generally* S. Exec. Rep. No. 108-8 (2003); S. Treaty Doc. No. 106-45 (2000). This Court should interpret the Convention in a manner therefore consistent with its protective purpose and

[8] *See* Petersen R, Pan L, Blanck HM. Racial and Ethnic Disparities in Adult Obesity in the United States: CDC's Tracking to Inform State and Local Action. Prev Chronic Dis 2019;16:180579. DOI: http://dx.doi.org/10.5888/pcd16.180579. Available at: https://www.cdc.gov/pcd/issues/2019/18_0579.htm.

international consensus. Creating health-based exceptions to accident liability would undermine the treaty's fundamental goal of protecting all passengers equally and also be inconsistent with the ACAA. This passenger-protective approach of the Montreal Convention therefore aligns (and should align) with the policy objectives underlying the ACAA, which Congress enacted in 1986 to ensure "consistent and nondiscriminatory treatment" for passengers with disabilities in air travel. Pub. L. No. 99-435, 100 Stat. 1080 (1986); S. Rep. No. 99-400 (1986).

The Department of Transportation has implemented both legal frameworks harmoniously, with neither statute creating exceptions that would undermine the passenger-protective purposes of the other. Both the Montreal Convention's comprehensive liability regime and the ACAA's anti-discrimination mandate reflect a consistent federal policy of prioritizing passenger rights and airline accountability over carrier convenience.

CONCLUSION AND PRAYER

Fourteen-year-old Kevin Greenidge boarded American Airlines Flight 614 trusting that if something went wrong, the crew would follow basic emergency procedures. That trust was catastrophically misplaced. As Kevin struggled to breathe and lost consciousness, American Airlines failed him at every turn—no immediate cockpit notification, no immediate CPR, no physician consultation, no organized

response. These were not minor oversights but rather were fundamental violations of protocols designed to save lives, and American Airlines now seeks to justify this unusual cascade of violations through a discriminatory narrative focused on obesity and individual medical conditions.

The District Court's decision to excuse these failures because Kevin had medical conditions represents a dangerous misinterpretation of law that threatens millions of passengers. This Court should reverse for three compelling reasons: First, four protocol violations during a medical emergency clearly constitute an "unusual and unexpected event" under *Saks*, *Husain* and their progeny ***for any passenger***. Every passenger has a right to receive the emergency procedures required by American's own safety protocols. Second, the District Court improperly injected causation into the accident analysis and violated the principles of the ACAA. Whether Kevin's conditions contributed to his death is irrelevant to whether the crew's conduct was unusual. Third, the ruling creates unlawful discrimination, permitting American Airlines to deny equal protection to the large number of flying, travelling Americans with chronic conditions.

The Montreal Convention protects all passengers equally, and the ACAA is supposed to ensure that all passengers are afforded the same rights including their rights under the Montreal Convention. The convergence of Montreal Convention

and ACAA violations in this case creates an opportunity for this Court to provide essential clarity on both fronts. By reversing the District Court's decision, this Court would not only restore proper Montreal Convention analysis but also vindicate the civil rights of millions of Americans with disabilities who depend on equal treatment in air transportation. The alternative—allowing airlines to provide substandard emergency care to passengers with medical conditions—would eviscerate both the Montreal Convention's universal protection and the ACAA's anti-discrimination mandate. At stake is a fundamental principle: When airlines establish emergency protocols, they must follow them for all passengers, regardless of health status. The alternative—allowing selective compliance based on passenger disability or related physical characteristics—creates a discriminatory regime the Montreal Convention was designed to prevent, and a regime inconsistent with the express purpose and mandates of the ACAA and its enabling regulations.

Kevin Greenidge deserved better than to die while American's crew ignored the need to provide basic emergency protocol to all passengers. His family deserves justice. And the flying public deserves assurance that emergency protocols are followed for all passengers. For these reasons, FlyersRights respectfully requests that this Court reverse the District Court's grant of summary judgment and remand for trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of FED. R. APP. P. 29(a)(5) because it contains 6,078 words, excluding parts exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: August 20, 2025

/s/ Anne M. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2025, I electronically filed the foregoing with the Clerk of Court using CM/ECF system, which will send notification of such filing to all counsel of record.

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