

Service Animal Advocate Positions and Reasoning

September 15th, 2016

Under each tent pole (primary) issue section, the position and the associated reasoning for each of the various advocate positions are listed. Organizations supporting each position are listed as “signatories.”

§1. *Service Animal Species (SAS)*

Position/Explanation SAS 1

Signatories:

- Brad Morris, Psychiatric Service Dog Partners
- Jenine Stanley, Guide Dog Foundation for the Blind & America's VetDogs
- Leslie Horton, International Association of Canine Professionals (IACP)
- Katy Rosseland, Open Doors Organization
- Parnell Diggs, National Federation of the Blind
- Sally Irvin, Assistance Dogs International
- Penny Reeder, Guide Dog Users, Inc.

Position:

Advocates supporting Position SAS 1 are granting a major concession in that we are restricting service animal species to dogs. There is exceptional, case-by-case access for disability-mitigating miniature horses and disability-mitigating capuchin monkeys, the latter of which must kept in a pet carrier. This is as specified in the 7/21/16 Advocate Proposal ("Advocate Proposal"). In addition, as in Position SA 1 from the 8/26/16 Advocate Service Animal Proposal Addendum ("Addendum"), this issue is to be revisited by the Department of Transportation (DOT) at a specific date in the future based on our understanding of the evolving role of other species as service animals.

Explanation:

An introductory note about understanding these positions: Many

advocates recognize that the status quo for service animal access under the Air Carrier Access Act (ACAA) regulations is not working. When proposing and evaluating a new system, advocates struggle with balancing two perspectives:

1) In contrasting the current system with proposals, advocates are hesitant to lose any "rights" or ease of access they currently have, either in specific situations or in an overall tally.

2) Advocates want to put a system in place that best respects all the considerations (such as safety concerns, disability rights, and the practicalities of the air travel context), regardless of how this new system may differ from the current one.

Everyone may have greater insight into advocates' reasoning if they recognize these perspectives and the challenges their differences can create.

Advocates supporting Position SAS 1 do not think that cats should be included as service animals for the following reasons.

Cats and other non-canine animals are not considered service animals under the 2010 update to the federal law that applies in most public access contexts—the Department of Justice (DOJ) Americans with Disabilities Act (ADA) regulations. In part, DOJ reasoned for the update as follows:

The Department agrees with commenters' views that limiting the number and types of species recognized as service animals will provide greater predictability for public accommodations as well as added assurance of access for individuals with disabilities who use dogs as service animals. As a consequence, the Department has decided to limit this rule's coverage of service animals to dogs, which are the most common service animals used by individuals with disabilities.¹

¹ This reasoning and additional aspects are available in "Appendix A to Part 36—Guidance on Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and Commercial Facilities", linked below: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&r=APPENDIX>

Miniature horses are given exceptional access under those regulations because their development as service animals was authoritatively organized and they have several specific features that make them a better choice or even the only choice for some persons with disabilities (much longer working life, allergen avoidance, religious conformance, soundness of structure for mobility work). Likewise, capuchin monkeys have exceptional access under the Advocate Proposal because their training is authoritatively organized and they can perform manually dexterous work or tasks (in residential settings) that dogs and miniature horses cannot.

There is no similar set of reasons at this time to justify the inclusion of cats as a service animal species. Currently, it seems that whatever service-animal-relevant features may apply to cats would also apply to any number of other species. In addition, some working group members are concerned that the popularity of cats as pets throws the door wide open for fraud if they are explicitly called out as an allowed species.

Given that we are not pushing to include any species without such distinguishing features, even if there are a few examples available of those who have trained various unusual species as service animals, we simply request a re-evaluation by DOT at a specific date in the future. At that time, any new information can be assessed to determine whether more species should be included under the "service animal" definition. This information may include research on the viability of and need for service cats (cats trained both to behave properly in public settings and for disability mitigation).

Although DOT *could* initiate an inquiry into the species issue on its own at any time, advocates are more interested in ensuring this inquiry will happen, rather than leaving whether or when it happens to an overloaded DOT's preference.

Position/Explanation SAS 2

Signatories:

- Heather Ansley, Paralyzed Veterans of America

- Alicia Smith, National Alliance on Mental Illness
- Samantha Crane, Autistic Self Advocacy Network
- Jennifer Mathis, Bazelon Center for Mental Health Law
- Jennifer Dexter, Easterseals
- Laura Weidner, National Multiple Sclerosis Society

Position:

Carriers must permit a service animal to accompany a passenger with a disability.

Carriers are not permitted to require documentation or other notifications for psychiatric service animals that are not required for all other service animals.

Service animals are dogs and cats that are trained to do work or perform a task to mitigate a person's disability on the flight or at the destination. Service animals must be trained to behave properly in public settings. Specifically, the animal must be housetrained and under the control of the handler by some type of tether unless the type of disability mitigation to be performed requires the animal to be under voice or other type of control. A service animal must not be disruptive, destructive, aggressive, or encroach on the space of another passenger without his or her permission. A service animal may not be placed on an airline passenger seat.

Miniature horses and capuchin monkeys, while not called service animals, have similar access as service animals. Miniature horses must be trained to do work or perform a task to mitigate a person's disability, and trained to behave properly in public settings. Capuchin monkeys must be trained for disability mitigation. As they are trained to assist their users in residential settings, capuchin monkeys are confined to FAA-approved pet carriers during air travel.

Current regulatory provisions involving the requirements for foreign carriers would remain in effect.

Explanation:

Service animals play a vital role in the lives of many people with disabilities. When unjustified restrictions are placed on access for service animals, people with disabilities who depend on their assistance are harmed. The ability to travel, including by air, is important to ensuring that people with disabilities have access to employment, health care, and recreational opportunities.

Under the Air Carrier Access Act (ACAA), domestic carriers must permit access for service animals unless the carrier determines that there are factors that preclude the animal from traveling in the cabin. However, carriers “are never required to accommodate certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin.”² Foreign carriers do not have to provide access to service animal species other than dogs.

Species limitations for service animals under the Americans with Disabilities Act (ADA) are defined by regulation. In 2010, the Department of Justice (DOJ) limited species for service animals under the ADA to dogs and provided exceptional access for miniature horses.³ The Department of Transportation’s (DOT) Federal Transit Administration, however, did not adopt DOJ’s definition.⁴ Thus, a service animal under DOT’s ADA regulations is “any guide dog, signal dog, or other animal individually trained to work or perform

² 14 C.F.R. Section 382.117.

³ However, DOJ acknowledged

that there are situations not governed by the title II and title III regulations, particularly in the context of residential settings and transportation, where there may be a legal obligation to permit the use of animals that do not qualify as service animals under the ADA, but whose presence nonetheless provides necessary emotional support to persons with disabilities. Accordingly, other Federal agency regulations, case law, and possibly State or local laws governing those situations may provide appropriately for increased access for animals other than service animals as defined under the ADA. Public officials, housing providers, and others who make decisions relating to animals in residential and transportation settings should consult the Federal, State, and local laws that apply in those areas (e.g., the FHAct regulations of HUD and the ACAA) and not rely on the ADA as a basis for reducing those obligations.

“Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 75 Federal Register 178, September 15, 2010, at 56269.

⁴ “It is important to note that while the U.S. Department of Justice has amended the definition of ‘service animal’ for purposes of its ADA regulations under Titles II and III of the ADA, for state and local governments and places that are open to the public, the definition under DOT ADA regulations for transportation has not changed.” U.S. Department of Transportation, Federal Transit Administration, “Frequently Asked Questions,” available at www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/frequently-asked-questions.

tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”⁵ Advocates and carriers have agreed to restrict the types of species that may have access as service animals under the ACAA. Specifically, advocates and carriers generally agree that service animals are dogs. Capuchin monkeys and miniature horses trained to provide disability mitigation will have exceptional access.

Advocates and carriers disagree, however, as to whether cats should continue to be recognized as service animals under the ACAA. The carriers’ reply to the service animal advocates’ addendum states that, “At this point, the carriers cannot agree to the addition of cats to the species originally proposed by the disability advocates.” It is important to note that the advocates themselves are not in agreement regarding whether cats should continue to be recognized as service animals.

The under signed advocates believe that passengers with disabilities who use cats as service animals should continue to have access for those animals. No evidence has been presented to support eliminating access for cats as service animals. Other disability rights laws including the ADA (under DOT’s regulation) and the Fair Housing Act provide access for cats as service animals. Without evidence that service cats present a safety risk in air travel, there is no justification for removing access.

§2. *ESA Species and Containment*

Position/Explanation ESA 1

Signatories:

- Brad Morris, Psychiatric Service Dog Partners
- Jenine Stanley, Guide Dog Foundation for the Blind & America's VetDogs
- Katy Rosseland, Open Doors Organization (open to inclusion)

⁵ 49 C.F.R. Section 37.3.

of birds, however, as characterized in ESA 2)

- Laura Weidner, National Multiple Sclerosis Society
- Penny Reeder, Guide Dog Users, Inc.

Position:

ESAs are limited to dogs, cats, and rabbits. ESAs must be contained in FAA-approved pet carriers as the default. If an ESA is out of the carrier for in-flight disability mitigation, the ESA must be on a lap, tethered to the handler, and comporting to the behavior standard detailed in the Advocate Proposal. Flight crew members may require that the ESA be kept in the carrier if it violates the behavior standard.

Explanation:

As a point of context, one of the principal reasons for the Reg Neg is that reports of fraud associated with ESAs have pushed airlines to a tipping point. Many service animal users also feel grossly disrespected by unabashed and unchecked fraud. In different situations, "fraud" may or may not be intentional on the part of passengers. Regardless, service animal users have been concerned more with the safety repercussions that arise in the stressful environments of air travel, when others' untrained animals are thrown together with their own partners in independence.

ESA species

The base of our reasoning for limiting ESA species comes from DOJ's reasoning about the change to its ADA service animal definition. First, DOJ wanted to increase predictability for businesses, apparently recognizing that employee training and expertise on service animals have their limits. Second, the proliferation of nontraditional species as service animals erodes the public trust toward service animal users in general (rightly or wrongly).

This reasoning is supported by the fact that both advocates and airline representatives have called out unusual species when citing issues with ESAs. This context leads us to justify each species in our position.

Dogs are uncontroversial. This simply mirrors the default service animal species.

There is a cluster of reasons to include cats. In the dominant context for ESAs—housing—ESAs generally don't require training or the ability to behave properly in public settings. This means that unlike with service animals, ESAs don't need to be selected on such a basis, and so their species is less relevant at the outset. Cats join dogs in being one of the two most common pet species by far. Finally, it is ordinary for an ESA user to identify as either a "dog person" or "cat person", but not both.⁶

Rabbits are included not because they are sufficiently common, but because some advocates report that rabbits can have especially soothing textures, beyond those of dogs or cats. This can be of utmost importance for some people in using an animal to mitigate a disability, especially if the person has a sensory-related disability.

The reasoning for rabbits is not extended to apply to other texturally pleasing animals. The initial DOJ reasoning above compels us to pick out individual species that can be justified, and then to draw the line.
ESA containment

We recognize that requiring an ESA be transported by default in a pet carrier will prevent many ESAs from having flight access with their disabled partner ("can't fit, can't fly"). The main reason for this severe limit is safety. Informal airline reports support the belief that ESAs are at the epicenter of animal safety incidents. Our desire here is to facilitate a safer environment for crew members and passengers, including service animal users.

On the other hand, restricting ESAs to pet carriers for the duration of the flight (as one airline representative suggested) does not respect the purpose of ESAs. If ESAs are to be allowed, then users should have reasonable access to them to use them for disability mitigation. If ESAs were forced to remain in pet carriers, FAA regulations indicate that the carrier could be placed in one's lap only during the cruising portion of the flight.⁷ However, the greatest ESA need for many is during the taxiing, takeoff, and landing portions. A "better than

⁶ The reasoning in this section assumes ESAs would be in pet carriers by default, as detailed below.

⁷ An FAA representative confirmed this via email through our service animal DOT contact on 8/26/16.

nothing" approach to ESAs is not acceptable.

FAA regulations do allow ESAs ("service animals") of a certain size to be on one's lap during all portions of the flight when they are outside of a pet carrier. We propose that all parties' considerations are best balanced if ESA users are allowed to remove the ESA from the carrier during the flight for disability mitigation, but may only have the ESA on a lap, tethered to the handler, and the ESA must comport to the behavior standard. The ESA may not be out of the carrier and off of a seated passenger's lap. Any violation of these rules, including the behavior standard, allows flight crew members to require that the ESA be kept in the carrier for the rest of the flight.

This position has benefits that go beyond merely having a reasoned compromise on pet carriers. These benefits include both simplicity over a more complicated proposal on offer and a clear distinction between ESAs and service animals.

These aspects are essential to having a system that works in practice, not just in theory. Members of the public and airline employees cannot be expected to comprehend and neatly implement a relatively complex new system of access for various classes of disability-mitigating animals. They already have trouble now! Subjective assessments of flight crew members are harder to complete under a complex scheme, rendering it more likely they will make inappropriate evaluations. If airline employees have to focus on making a judgment call every time to parse out whether a situation is appropriate, this burdens the employees while harming service animal users and ESA users, precipitating a climate of mistrust.

There is a key idea to understanding our ESA pet carrier restriction: It is not reasonable to expect ESAs to be trained to behave properly in public settings (also known in the service animal community as "public access trained" or "public exposure trained"). ESAs are primarily used in residential settings. Training for public access involves successfully training the animal in a variety of environments in a way that is very likely to result in the animal behaving in the unpredictable settings of a busy airport and the crowded cabin of an airplane in flight. Developing these psychological shock absorbers

requires dedication, skill, and significant time.⁸

It seems that the argument for allowing some ESAs to travel *outside* of pet carriers comes from making the following connection. Note that this characterization is **not** our position!

Since some small segment of the ESA-using population has some degree of ability to take their ESAs into public, the upshot is that it's reasonable to expect a sufficiently large population to have ESAs trained to behave in public settings.

This thinking makes a lot of leaps. First, most ESA users do not have public access to traditionally no-pets places with their ESAs. Second, training for public access does not require mere access, but actually taking the animal to the places for training. Further, there should be a concentrated effort toward this kind of training, not merely happening to have the animal present in some public places. Beyond this, if some such training does take place, specific elements should be involved that make the training relevant to air travel.

All of these factors sharply funnel down the likelihood of an ESA being relevantly trained to behave properly in public settings so that the chance is minuscule.⁹ The theoretical ESA that is trained to behave properly in public settings would be a rare exception, and it is imprudent to craft the main rule from the exception.

We worry about the misrepresentation that would be set in motion by a "hybrid ESA system" (one that includes access with pet carriers and without). The majority of ESAs are dogs that are too large for pet carriers and are not trained to behave properly in public settings. This means that most of the ESA-using population would not technically have flight access with their ESAs under a hybrid ESA system.

Consequently under the hybrid system, we would be trusting the

8 Generally, this takes purpose-driven training over a substantial period of time (as much as 1–3 years). This is well beyond taking an introductory obedience class and the animal happening to behave okay in relaxed, predictable, or familiar environments. The purpose is to ensure the animal will behave stably and with minimal stress in environments that are stressful, unpredictable, or unfamiliar.

9 The analysis can approach this from another direction. It's extremely odd that anyone would have such access and put such effort into training for air travel—being so invested in having their animal for disability mitigation—yet they would not do any work or task training. Training the dog to mitigate the user's disability with just one work or task item would turn such a dog into a service animal, rather than an ESA.

majority of these larger-ESA users not to lie on or misinterpret the decision tree to gain ESA access. As one advocate has pointed out, most parents and pet owners think their charges are well-behaved, even when they're not. These hybrid system circumstances effectively lay out the welcome mat for widespread misrepresentation.

We do not reject the possibility that ESAs could happen to behave—possibly out of luck, rather than ensured through training. But having public access with an animal isn't about being lucky. There is also a theoretical possibility that a few ESAs have actually been trained to behave in public settings like a service dog has.¹⁰ However, the overall results of a hybrid ESA system are not tenable when we look beyond the favorable, rare exceptions and consider the unfavorable expected results.

We are worried about the safety of people in the airport, people on the airplane, and especially our constituents' service animals, as these are often their lifelines to the world. We are cautiously willing to accept ESAs in carriers because it significantly addresses the safety factor. We have not accepted the idea that ESAs should be able to travel outside of carriers. We do not see the decision tree as a sufficient safeguard regarding the multitude facing zero ESA access vs. ESA access with a decision tree misrepresentation.

A comparison is helpful to demonstrate our perspective. The main security measures to prevent terrorism happen before any passenger reaches the aircraft. Similarly, increasing safety for the captive environment of an airplane means our focus must be more on prevention than cure.

An airline certainly needs to take action when there's a problem, but that would not be sufficient to prevent problems. When it comes to ratcheting down the risk to acceptable levels for service animal users and other passengers, we are not comfortable with a "wait and see" approach with each ESA, each time.

¹⁰ Why should one generally expect service animals to be trained to behave properly in public places, if these arguments lead us to think ESAs are not so trained? First, this expectation is consistent with reports from airline representatives. Second, we have a much higher expectation that an animal has been trained to behave properly in public settings if it has been trained for disability mitigation (and its default is to go everywhere with its user as an assistive device that must function properly).

Position/Explanation ESA 2

Signatories:

- Heather Ansley, Paralyzed Veterans of America
- Alicia Smith, National Alliance on Mental Illness
- Parnell Diggs, National Federation of the Blind
- Samantha Crane, Autistic Self Advocacy Network
- Jennifer Mathis, Bazelon Center for Mental Health Law
- Jennifer Dexter, Easterseals

Position:

Carriers must permit an emotional support animal to accompany a passenger with a disability.

Emotional support animals are dogs, cats, rabbits, and household birds. “Household birds” does not include chickens, ducks, or turkeys. Rabbits and birds would be restricted to an FAA-approved pet carrier for the duration of a passenger’s flight. Emotional support animals that are dogs and are trained to behave in public but not trained to provide disability mitigation do not require a pet carrier. All other emotional support animals that are dogs or cats would be restricted to a pet carrier unless providing disability mitigation. If providing disability mitigation, then the dog or cat must be tethered to the handler and under control of the handler. The animal must also not be disruptive, destructive, aggressive, or encroach on the space of another passenger without his or her permission. An emotional support animal may not be placed on an airline passenger seat.

Current regulatory provisions involving the requirements for foreign carriers would remain in effect.

Explanation:

Under the Air Carrier Access Act (ACAA), emotional support animals are considered to be service animals. Advocates recognize that

emotional support animals are different from service animals in that they are not *trained* to perform work or tasks to mitigate disability. However, the mere presence of these animals is crucial to allowing a person with a disability to travel by air.

The carriers' reply to the service animal advocates' addendum stated that "consistent with the Americans with Disabilities Act and foreign jurisdictions, ESAs should not be recognized in the Air Carrier Access Act context." Although advocates disagree about which species should be allowed access as emotional support animals and what type of access they should have, the advocates have continued to support access for these animals under the ACAA.

The carriers' position for eliminating access for emotional support animals places significant reliance on the Department of Justice's (DOJ) Americans with Disabilities Act (ADA) regulations. In September 2010, DOJ issued a final rule that modified the definition of a service animal under the ADA. In its final rule, DOJ retained its exclusion of access for emotional support animals. However, the Department's explanation distinguishes access under the ADA and access under other disability rights laws.

The Department's position is based on the fact that the title II and title III regulations govern a wider range of public settings than the housing and transportation settings for which the Department of Housing and Urban Development (HUD) and the DOT regulations allow emotional support animals or comfort animals. The Department recognizes that there are situations not governed by the title II and title III regulations, particularly in the context of residential settings and transportation, where there may be a legal obligation to permit the use of animals that do not qualify as service animals under the ADA, but whose presence nonetheless provides necessary emotional support to persons with disabilities. Accordingly, other Federal agency regulations, case law, and possibly State or local laws governing those situations may provide appropriately for increased access for animals other than service animals

as defined under the ADA.¹¹

DOJ's explanation for its regulation specifically noted that its decision was influenced by the diversity of settings covered by the regulation. DOJ must weigh access for disability-mitigating animals to accommodations from grocery stores to hospitals. The ACAA's regulations, however, cover only air travel. Thus, there seems to be little need to eliminate access for all emotional support animals based on DOJ's decision when that decision was based on factors not present in determining access for air travel. In addition, nearly all emotional support animals will need to travel in FAA-approved pet carriers which would minimize any potential safety risks.

Assuming emotional support animals continue to have access, advocates have diverse views regarding which species of animals should be allowed access as emotional support animals. Some advocates would limit allowable species to dogs and cats while others would also provide access for rabbits. The carriers have previously stated that, if emotional support animals are allowed, then they should have the same species restrictions as service animals.

The signatory advocates argue that emotional support animals provide a broad range of support that justifies a broader species allowance than that provided for service animals. For example, the opportunity to interact with a rabbit's fur may provide emotional support to a person with a disability without the rabbit having been trained to perform disability mitigation. It should also be noted that a quick survey of some carrier websites revealed that dogs, cats, rabbits, and household birds are allowed passage as pets on at least some carriers. Thus, it is difficult to assert that specifically rabbits and household birds should be denied access as being "unusual" or "dangerous" if these animals are allowed carriage as pets.

Advocates also have diverse views regarding the type of access that should be allowed for emotional support dogs. Some advocates support restricting all emotional support animals, including dogs, to FAA-approved pet carriers unless providing disability mitigation. The carriers have previously asserted that, if allowed, emotional support animals should be restricted to pet carriers.

¹¹ "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 75 Federal Register 178, September 15, 2010, p. 56269.

The signatory advocates believe that a pet carrier restriction for all dogs serving as emotional support animals would place unnecessary burdens on access to travel for passengers with disabilities who use larger breeds of dogs. In order to travel without a carrier, an emotional support dog must be trained to behave in public. Behavior standards must be enforced not outright bans that are overly broad and unjustified.

Position/Explanation ESA 3

Signatories:

- Leslie Horton, International Association of Canine Professionals (IACP)
- Sally Irvin, Assistance Dogs International

Position:

ESAs are cats and dogs. ESAs must be contained in FAA-approved pet carriers for the duration of a passenger's flight unless providing disability mitigation. They must be able to meet standards of behavior and be tethered to the handler to perform disability mitigation outside of the carrier.

No more than two ESAs may accompany a passenger.

Explanation:

We do not support rabbits at this time for three major reasons:

1. Even with litterbox training, rabbits are not reliable in not eliminating out of the carrier.
2. It is difficult to justify the allowance of rabbits and not other species. The documentation and evidence for supporting the reliability in training a rabbit is not able to be found in scholarly search engines. Therefore, this leads us to believe that the behavior of the rabbit is difficult to predict.
3. Per data provided by airlines, most animals flying are dogs and cats. Placing both of these species in situations where they would have to curtail their predatory drives when a rabbit is on an airplane

during a flight may interfere with the reliability to predict the behavior of the cats and dogs and, therefore, create the possibility of a safety incident.

Limitation on number of ESAs

We recognize that space on a plane is limited and that the passengers and animals will need to be kept safe during travel. This includes consideration of the ability of the airline to adequately accommodate more than one carrier on a flight.

§3. *Decision Tree/Documentation (Dtree)*

Position/Explanation Dtree 1

Signatories:

- Brad Morris, Psychiatric Service Dog Partners
- Jenine Stanley, Guide Dog Foundation for the Blind & America's VetDogs
- Katy Rosseland, Open Doors Organization
- Penny Reeder, Guide Dog Users, Inc.

Position:

Any system of notification or affirmation of travel with an animal should have a far-reaching basis in safety as well as fraud prevention. Completing the decision tree as close to the time of ticket purchase as possible is the default procedure. Otherwise, passengers risk not having access or timely access with their animal.

Explanation:

Education and fraud prevention are the top design challenges the decision tree is intended to meet. Secondary considerations include logistical planning, such as providing passenger assistance and seating arrangements, and preventing undesirable encounters at the airport by removing document evaluation from the subjective variability of airport personnel, freeing them to focus only on acceptable behavior

in this area.¹²

All of this is with an eye toward establishing a safe environment for everyone while not creating an undue burden for those with disabilities. This document has been drafted on and around the 15th anniversary of the September 11th attacks, helping remind us that there have been many changes to the air travel environment since then. Many of these changes involve safety measures but equally as many involve design of aircraft, increased air travel, and advanced technology in screening procedures. We live in a time where we cannot ignore that safety, disability rights, and practical considerations must be individually respected and jointly balanced.

Airline representatives seem to indicate that incidents involving animals on flights are on the rise. Not all incidents pose extreme safety threats but many rise to the status of confrontational based on either verification of disability or behavior of the animal. The apparent growth in incidents is also matched by an increase in passenger traffic with fuller flights, smaller seating areas, delays, etc. All of these factors collide to ignite problems in a space that cannot tolerate conflict.

Proponents hope the decision tree will educate prospective animal-accompanied travelers as to their rights and responsibilities. This is intended not only to reduce (intentional) fraud by having travelers perspicuously attest they and their animals meet the legal requirements. The decision tree is also intended to filter out those who would inappropriately travel with their animals due mainly to ignorance. It's important to bear these goals in mind when evaluating whether various decision tree or verification possibilities would achieve what they're supposed to. We aim to defuse the conflicts before they start.

The decision tree as the default procedure

Rather than trying to paint positions as black or white with "mandatory" or "voluntary" labels, we should look at how positions

¹² Service animal users want more enforcement of behavior standard rules in order to keep everyone safe. In case airlines are afraid of a media backlash, airlines should be aware that service dog organizations such as PSDP and CUSDGS are willing to make public statements in support of reasonable enforcement actions when there is clear and complete evidence of misbehavior or fraud.

on the decision tree would work in practice. Our position would be executed with language such as the following:

"Passengers accompanied by working animals or pets are expected to complete the following form in order to secure accommodations with an animal. Otherwise, passengers may encounter challenges at the airport resulting in a missed flight or being unable to travel with their animal."

Any decision tree scheme that allows any exception at all is not strictly "mandatory". Our position more practicably sets the decision tree as a very strong default. The decision tree would only be "voluntary" in that individuals could choose to risk very adverse consequences if they do not complete it.

In typical ADA title II and title III contexts, members of the public have access without special verification procedures related to their service animals. If the animal's status as a service animal is unclear, basic questions can be asked to resolve its status. If there is a behavioral problem or the animal presents a fundamental alteration, the animal can be removed. The special context of flying is more like title I contexts and Department of Housing and Urban Development (HUD) Fair Housing Act (FHAct) contexts, in that there is justification for a somewhat heightened verification process.

An ounce of prevention is worth a pound of cure in the context of air travel, because misbehaving animals cannot be removed while flying, and may continue to present either safety problems or other ineliminable disruptions. Busy airports and an imprisoned collection of many stressed people in tight quarters are advanced environments for a well-trained service dog, let alone a little-trained pet someone mistakenly believes is allowed. Having little to no prior filter as a safeguard should strike us as odd when a severe issue can cause personal injury or a flight diversion.

It is in this context that reasonable aspects of the default verification process for air travel include advance notice and ensuring that the traveler understands and attests to the requirements. This is an extension of DOJ's two verification questions tailored to the context of air travel. Travelers would only verify those facts that are relevant

to determining that they and their animals constitute service animal or ESA teams, and that they understand the implications of those attestations.

Timing and repetition of the decision tree

If the default is not that travelers are educated and attest to that knowledge well in advance of the flight, the purposes of the decision tree are subverted. If travelers are instead told they can simply choose to avoid the decision tree without good reason, or travelers are told they can wait until close to the time of online check-in, we have a recipe for maximum conflict at the airport. Here's why.

Arranging for pet care can take a lot of lead time, planning, and expense. The closer to the travel date the decision tree is completed—especially at the airport—the more likely it is that passengers will inaccurately complete the decision tree because pet care arrangements aren't available. This is why the default time for completing the decision tree should be as close to the ticket purchase as practicable.

There are service animal users who are not currently required to provide an element-rich doctor's note ahead of time to gain access to their flights. A selection of these individuals oppose any type of notification. Their opposition is regrettable, but understandable—even when the notice is essentially a permutation of answering DOJ's two verification questions.

We realize there will be individuals for whom any degree of questioning or intervention regarding disabilities or service animals is objectionable. For this group, there are honestly no workable solutions that also address the issues of safety and fraud faced by the air travel industry and fellow passengers.

In a fantasy world, only those who needed the decision tree's education or fraud prevention would have to complete it. Analogously, only those with liquid wheelchair batteries (which must be disconnected for safety) would be asked whether they have liquid or gel batteries. Or only the terrorists would have to be screened for security. But that's unrealistic, and everyone has to participate for the system to work.

The middle ground seems to be that travelers would have the option

of saving their decision tree data for a certain time period (e.g., 60 days). This would satisfy one of the concerns of the service animal users who fly frequently. It would also serve the purpose of the decision tree by forcing verification (we do have ideas for future collaborations on how this could be executed).

Optimally, airlines would tie the decision tree into whatever pet policy or procedure they have, and would also include their own simple branch(es) related to the carriage of search and rescue dogs, law enforcement dogs, etc. For some airlines, this may just mean that travelers selecting "pet" would be directed to a "no pets" policy explanation, while selecting "law enforcement dog" directs the traveler to call the airline for assistance.

Including non-disability-mitigating animals in an airline's decision tree makes it clear that the reasons an airline wants the decision tree data from passengers with disabilities are the same reasons as for any other passengers traveling with an animal: safety and logistics. Ideally, the disability aspect should be incidental to the airline's approach. This can work toward reassuring those who do not wish to be singled out strictly on the basis of disability.

Consequences of and exceptions to the default decision tree

Having travelers complete the decision tree by default will likely make airport personnel more suspicious of those who do not complete the decision tree. This means that if there were a system at the airport whereby personnel can require some third-party documentation when someone doesn't give, for instance, "credible verbal assurance", the bar will unavoidably be set higher for what constitutes that assurance. This leads to the worry that people who reasonably did not complete the decision tree will then be faced with a surprise documentation requirement at the airport (maybe there was a travel agent typo with the passenger's email address in a system using email to solicit decision tree completion).

Most people with assistive devices do not carry around documentation to justify their use of such devices. It is not acceptable that a person with a disability would not be able to fly with their assistive device due to the refusal of an airline to make a reasonable exception on a

case-by-case basis. If such a person has a good reason for not having completed the decision tree ahead of time, they should be given the opportunity of doing so at the airport via some method accessible to that person.

Willfully not completing the decision tree in advance of travel carries the deterring risk of then being at the mercy of the subjective judgment of airport personnel as to what constitutes good reason. Those who willfully do not complete the decision tree chance having their animals turned away at the airport, with particular scrutiny at the gate if they bypass the ticket counter by checking in online. Additionally, if given the green light to do so, they must take extra time to complete the decision tree at the airport (if the airline desires), risking a missed flight.

We have clarified why the decision tree cannot be *strictly* mandatory, but it can be a strong default. The level of compliance we should expect with this decision tree default varies based on whether the decision tree can be built into the ticket purchase flow, or whether there is an email alert system after the purchase. Backups to the default should only burden passengers in reasonable proportion to the level of compliance we should expect. If airlines can only implement a system wherein passengers are expected to track down the fine print of an email at which many passengers will only glance, airlines should expect a very low level of compliance.¹³ Consequently, airlines would need to have a very low bar at the airport for granting access to those who earlier failed to complete the decision tree.

If practically everyone with a disability-mitigating animal must complete the decision tree and will thereby have their passenger name record (PNR) marked with "SVAN" or "ESAN", training of airline personnel becomes even more important to address advocate concerns. Some advocates forcefully object to being required to identify as disabled ahead of time or on record because they receive undesired presumptive treatment, such as being sought out by employees, only to be infantilized. If the airlines are to be entrusted as

¹³ This is not to say that any iteration of an email-based notification system would have very low compliance. However, this is a significant worry if the decision tree can truly not be made part of the ticket purchasing process. Advocates look forward to hearing from airline representatives about the details of implementations that might garner more compliance.

stewards of this information for all relevant parties, they must commit to effective training of personnel regarding respectful interactions with persons with disabilities. This worry about undignified treatment is based on actual and routine experiences, not theoretical imaginings.

Regarding accessibility of the decision tree, the fact that something meets web accessibility standards doesn't mean everyone can access it. Meeting web accessibility standards ensures that the majority of those who are able to access websites in some way will be able to access the website in question. There remain those whose disabilities or access to technology render web accessibility moot for them.

We have heard from one airline representative that airlines would somehow not be able to handle assisting passengers in completing the decision tree via telephone. We find this puzzling. At least one airline already takes it upon itself to call passengers it believes might be traveling with a disability-mitigating animal. This airline then makes several inquiries beyond those sanctioned by the current regulatory framework. It is difficult for advocates to understand why a representative of that airline claims it is impractical for the decision tree to be completed over the phone when the airline already apparently takes a great deal of time calling passengers for an equivalent purpose. Advocates reiterate that there must be accessible methods for requesting accommodations.

Position/Explanation Dtree 2

Signatories:

- Heather Ansley, Paralyzed Veterans of America
- Alicia Smith, National Alliance on Mental Illness
- Jennifer Mathis, Bazelon Center for Mental Health Law
- Jennifer Dexter, Easterseals
- Laura Weidner, National Multiple Sclerosis Society

Position:

Carriers may not request third-party medical documentation for psychiatric service animals and emotional support animals as a

condition of access.

Carriers may be permitted to ask all passengers traveling with a service animal or emotional support animal to voluntarily complete a decision tree or other mechanism requiring the passenger to acknowledge that he or she is traveling with such an animal and attesting to the validity of the need for that animal to provide disability mitigation. The decision tree or other mechanism may ask the following questions:

- Does the passenger have a disability covered by the Air Carrier Access Act (ACAA)?
- Will the passenger be traveling with a service animal or emotional support animal (as defined by regulation)?
- Does the passenger affirm that the animal meets the requirements of the ACAA, recognizing that fraudulently making such an assertion may result in forfeiting the passenger's rights under the airline's contract of carriage, tariffs, or other terms and conditions spelled out in any other applicable airline programs?

If a passenger does not complete the decision tree or other mechanism, and his or her service animal or emotional support animal is called into question, and not satisfied based on credible verbal assurance, then the airline may request verification to substantiate the passenger's disability-related need for the animal's accompaniment.

Carriers may be permitted to require that *all passengers* agree to a statement that if they are planning to travel with a service animal or emotional support animal that it meets the requirements of the ACAA, recognizing that fraudulently making such an assertion may result in forfeiting the passenger's rights under the airline's contract of carriage, tariffs, or other terms and conditions spelled out in any other applicable airline programs. Passengers must be given the opportunity to comply with attestation requirement at time of travel, if needed.

Explanation:

Under the Air Carrier Access Act (ACAA), individuals with disabilities seeking to travel with a psychiatric service animal or an

emotional support animal may be required by the carrier to provide current documentation “on the letterhead of a licensed mental health professional” stating that he or she “has a mental or emotional disability recognized in the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition.”¹⁴ The letter must also state that the passenger needs the animal “as an accommodation for air travel and/or for activity at the passenger’s destination.”¹⁵ The assessing professional must be “a licensed mental health professional” and the individual must be “under his or her professional care.”¹⁶ Lastly, the documentation must provide “[t]he date and type of the mental health professional’s license and the state or other jurisdiction in which it was issued.”¹⁷

Requiring all individuals who use psychiatric service animals and emotional support animals to provide medical documentation as a condition of access is a stigmatizing process that creates unnecessary barriers to air travel. Elimination of this requirement is a top goal of the advocates. Individuals using service animals, other than psychiatric service animals, are not required to provide documentation or advance notice to the carrier about their intent to travel with such an animal. The signatory advocates believe that individuals using psychiatric service animals and emotional support animals must be afforded these same rights.

To ensure equal treatment, however, the advocates have proposed replacing current third-party documentation requirements for psychiatric and emotional support animals with first-party attestation through a decision tree or other mechanism for all service animals and emotional support animals. Advocates disagree, however, about whether all service animal users and emotional support animal users should be *required* to complete a decision tree or other similar mechanism. Carriers believe that it must be mandatory.

The signatory advocates would support a voluntary decision tree or other similar mechanism to educate passengers traveling with service animals or emotional support animals about their rights and

14 14 C.F.R. Section 382.117(e) and (e)(1).

15 14 C.F.R. Section 382.117(e)(2).

16 14 C.F.R. Section 382.117(e)(3).

17 14 C.F.R. Section 382.117(e)(4).

responsibilities. Such a decision tree or other similar mechanism would include an affirmation that an animal meets the requirements of the ACAA and is needed due to a disability. Even a voluntary process would educate passengers with disabilities who use service animals or emotional support animals. It would also educate potential fraudsters about the seriousness of pretending a pet is an animal used for disability mitigation.

In the alternative, the signatory advocates would agree to a mandatory attestation for all passengers requiring them to acknowledge the requirements for access for a service animal or emotional support animal and the penalties of seeking to benefit fraudulently from ACAA protections. Such a statement would educate all travelers that falsely claiming an animal is a service animal or emotional support animal is a violation of the contract of carriage and could subject them to penalties available to the airlines to remedy such violations. These advocates believe that requiring all passengers to attest to a single question would be the best way to educate the traveling public and mitigate fraud. In addition, such an approach would not require people with disabilities to disclose a disability or use of a service animal prior to arriving at the airport.

Disagreement over whether an attestation or decision tree or other mechanism should be required may be moot as some carriers may be unwilling to eliminate any current third-party documentation. Advocates do not support any automatic requirement for service animal and emotional support animal users to provide third-party documentation. Such automatic third-party documentation requirements are a barrier for people with disabilities who use service animals and emotional support animals.

If passengers are required to provide an attestation or decision tree or other similar mechanism in order to travel with a service animal or emotional support animal, then they must be afforded an opportunity at the airport to complete it. In the carriers' response to the advocates' proposal, the carriers stated that submission of a decision tree or other mechanism must be at the point of sale. In response to the advocates' addendum, however, the carriers reported that they had determined it was not feasible to require submission of the documentation at time of booking. Carriers are now proposing that passengers submit required

documentation no later than 12 hours before travel.

The signatory advocates cannot support any proposal that would limit the ability of passengers traveling with a service animal or an emotional support animal who fail to complete the required documentation prior to arriving at the airport to travel with their support animal. These advocates believe that it will be difficult to ensure that passengers traveling with service animals or emotional support animals receive the required notification to complete the documentation. In addition, despite regulatory requirements and best efforts, websites and other electronic communications may not afford proper access to people who are blind, have low-vision, or have cognitive impairments.

Even if documentation is required for all service animals and emotional support animals prior to arrival at the airport, carriers will still need to ensure that any animal not behaving appropriately is addressed with the animal's handler. Receiving an attestation or decision tree or any other documentation prior to the arrival of the passenger will not negate this responsibility. Carrier personnel, including gate agents, must be trained to address any service animal or emotional support animal behavior that is not in compliance with the standards of behavior.

Assuming that passengers are required to complete an attestation or decision tree or other similar mechanism, the signatory advocates also remain concerned about the ability of the carriers to request third party documentation. Under current policy, carriers may request third-party documentation if an individual is unable to provide credible verbal assurance. These advocates would not object to continuation of this policy as long as any such request was invoked after actually observing the animal at time of travel and the carrier could articulate a reasonable basis for the request. The number of such requests must be reported to DOT on an annual basis.

Position/Explanation DTree 3

Signatories:

- Leslie Horton, International Association of Canine

Professionals (IACP)

- Parnell Diggs, National Federation of the Blind

Position:

Persons traveling with one service animal would be accommodated without requirement to complete the decision tree. Persons with disabilities traveling with more than one service animal and/or with ESAs would be required to complete the decision tree.

Explanation:

A) Decision tree documentation would be optional for those with disabilities that require the use one service dog. This optional completion of the service dog would apply to the species exceptions already defined above as miniature horses and capuchin monkeys.

Not only is this consistent with the FAA regulations for airports, it is congruent with the Department of Justice Code of Federal Regulations 36.302

“A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).”

The person will be accommodated without documentation and will only be asked the two clarifying questions only when it is not

readily apparent that an animal is trained to do work or perform tasks for an individual with a disability. If the person with disability chooses to complete the decision tree, the person is doing so only for the ease of the accommodation by the airlines.

We also believe that this will decrease the amount of fraudulent situations in that the rules for service animals would be consistent across the federal departments guiding service animals.

- B) In the circumstances where as a person with a disability is traveling with two or more service dogs or a combination of an SA with an ESA, we support required completion of the decision tree with the provision that additional documentation, such as third party documentation, could only be required in the case of review of incidents.

We recognize that the accommodation of more animals may take more planning on the part of the airlines and would need to be evaluated on a case-by-case basis to ensure the safety and comfort of the person with the disability, the animals and the other passengers.

While timely completion of the decision tree as close to the time of ticketing as possible is recommended, we believe that the airlines must also have a way to provide support to those who arrive at the airport without opportunity to complete the decision tree due to limits of disability and/or timing of ticketing and/or computer glitches.

We believe that requirements for additional documentation requirements other than the decision tree increase the burden placed on those with disabilities who chose to travel by airplane.

- C) For those traveling with ESA's, we recommend the mandatory completion of the decision tree with the provision that additional documentation, such as third-party documentation, could only be required in the case of review of incidents.

Completion of the tree will address the fraud concerns of the airlines. In addition, this will meet the intended purpose of the tree

to educate those who commit fraud due to lack of knowledge and to obtain an official statement of knowledge of the rules for those with the intent to commit fraud.

We also believe that the completion of the decision tree for ESAs significantly reduces the additional burdens for documentation that persons with disabilities who use ESAs have under the current regulations.

D) With the willingness of the advocates to support the limitation of ESAs in species and carriers and the required completion of the decision tree for those traveling with more than one service animal or for those traveling with ESAs, we are asking for a commitment from the airlines to provide education and training to its staff regarding the rules and regulations and proper interactions for person with disabilities who utilize these animals.

The need for this education has been clearly demonstrated in the experiences of those advocates who travel with service animals and ESAs.