

No. 21-11159

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DAVID SAMBRANO, on their own behalf and on behalf of all others similarly situated; DAVID CASTILLO, on their own behalf and on behalf of all others similarly situated; KIMBERLY HAMILTON, on their own behalf and on behalf of all others similarly situated; DEBRA JENNEFER THAL JONAS, on their own behalf and on behalf of all others similarly situated; GENISE KINCANNON, on their own behalf and on behalf of all others similarly situated; SETH TURNBOUGH, on their own behalf and on behalf of all others similarly situated,

Plaintiffs-Appellants

v.

UNITED AIRLINES, INCORPORATED,

Defendant-Appellee

On Appeal from the United States District Court
for the Northern District of Texas
No. 4:21-cv-01074 (Pittman, J.)

APPELLEE'S RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEF

Alexander V. Maugeri
JONES DAY
250 Vesey St.
New York, NY 10281
(212) 326-3939

Russell D. Cawyer
KELLY HART & HALLMAN LLP
201 Main St., Ste. 2500
Fort Worth, TX 76102
(817) 332-2500

Donald J. Munro
Hashim M. Mooppan
Lead Counsel
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 879-3939
hmmooppan@jonesday.com

Counsel for Defendant-Appellee

CERTIFICATE OF INTERESTED PERSONS

No. 21-11159, David Sambrano et al. v. United Airlines, Incorporated

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. Defendant - Appellee **United Airlines, Incorporated** (“United”) is a wholly owned subsidiary of **United Airlines Holdings, Inc.**, which has no parent corporation and no publicly-held corporation owns 10% or more of its stock.

2. Plaintiffs - Appellants **David Sambrano, David Castillo, Kimberly Hamilton, Debra Jennefer Thal Jonas, Genise Kincannon, and Seth Turnbough.**

3. **Airline Employees 4 Health Freedom** is an interested entity in this case.

4. The following law firms and counsel have participated in the case:

Defendant-Appellee

United Airlines, Inc.

Counsel

Donald J. Munro
Hashim M. Mooppan
JONES DAY
51 Louisiana Ave, N.W.
Washington, D.C. 20001
(202) 879-3939
dmunro@jonesday.com
hmmooppan@jonesday.com

Alexander V. Maugeri
JONES DAY
250 Vesey St.
New York, NY 10281
(212) 326-3939
amaugeri@jonesday.com

Jordan M. Matthews
JONES DAY
77 West Wacker, Suite 3500
Chicago, IL 60601
(312) 782-3939
jmatthews@jonesday.com

Russell D. Cawyer
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, TX 76102-3194
(817) 332-2500
russell.cawyer@kellyhart.com

Esteban Shardonofsky
Vanessa Nicole Rogers
SEYFARTH SHAW LLP
700 Milam Street, Suite 1400
Houston, TX 77002
(713) 225-1001
sshardonofsky@seyfarth.com
vrogers@seyfarth.com

Plaintiffs-Appellants

David Sambrano; David Castillo;
Kimberly Hamilton; Debra Jennefer
Thal Jonas; Genise Kincannon; Seth
Turnbough

Counsel

John C. Sullivan
S|L LAW PLLC
610 Uptown Blvd., Suite 2000
Cedar Hill, TX 75104
(469) 523-1351
john.sullivan@the-sl-lawfirm.com

Robert C. Wiegand
Melissa J. Swindle
STEWART WIEGAND & OWENS PC
325 North St. Paul St., Suite 3750
Dallas, TX 75201
(469) 899-9800
bob.wiegand@swolegal.com
melissa.swindle@swolegal.com

Mark R. Paoletta
Gene C. Schaerr
Brian J. Field
Kenneth A. Klukowski
Joshua J. Prince
Annika M. Boone
SCHAERR | JAFFE LLP
1717 K Street N.W., Suite 900
Washington, D.C. 20006
(202) 787-1060
mpaoletta@schaerr-jaffe.com
gschaerr@schaerr-jaffe.com
bfield@schaerr-jaffe.com
kklukowski@schaerr-jaffe.com
jprince@schaerr-jaffe.com
aboone@schaerr-jaffe.com

Dated: April 13, 2022

/s/ Hashim M. Mooppan
Hashim M. Mooppan
Counsel for Defendant-Appellee

INTRODUCTION

Plaintiffs’ supplemental brief is wrong from top to bottom. Plaintiffs assert that “United is actively and effectively preventing Sambrano and Kincannon from returning to their jobs by prohibiting them from flying to more than 30 countries.” Supp. Br. 1. Based on that premise, Plaintiffs contend that “this appeal clearly is not moot,” that “the panel opinion is more important than ever,” and that rehearing en banc should be denied. *Id.* at 2.

Plaintiffs’ factual premise, however, is based on multiple mischaracterizations. Sambrano and Kincannon have been allowed to return to work at their normal positions with their previous pay rates (for both base pay and route-specific pay) and previous benefits. The geographic travel restrictions to which they now object merely reflect that many foreign countries have imposed legal limits and practical constraints on unvaccinated flight-crew members. Nevertheless, Sambrano and Kincannon each retain ample opportunity to be paid for working on flights to all other international and all domestic locations, including the overwhelming majority of the flight routes that they actually worked in 2021. *See* Decl. of Sarah Nau (attached as Ex. A); Decl. of Robert Krabbe (attached as Ex. B).

In all events, Plaintiffs’ legal conclusions are erroneous. The question presented and decided on appeal was whether Sambrano and Kincannon were suffering irreparable injury from being “placed on unpaid leave indefinitely” as a

religious accommodation from United’s COVID-19 vaccination requirement. Panel Op. 1. That question, however, has become and remains moot, because Sambrano and Kincannon are no longer on unpaid leave in light of the pandemic’s changed trajectory, and they still have no reasonable expectation of returning to that status. Even if their inability to bid on certain international flight routes were to decrease their overall compensation—which may or may not occur, depending on which, and how many, other routes they bid on—any such diminution of pay falls far short of the loss of “all pay and benefits indefinitely” that was the basis for the panel majority’s “coercive choice” irreparable-injury holding. *Id.* at 18-19. And that is especially true since Sambrano and Kincannon conspicuously fail to assert that they themselves feel any “crisis of conscience,” let alone that they are actually considering abandoning their religious beliefs simply to optimize their preferred flight routes and take-home compensation.

Accordingly, despite Plaintiffs’ supplemental submission, the merits panel should grant United’s pending motion to dismiss the appeal as moot and vacate the panel opinion. But if the panel concludes otherwise—and especially if it treats *any* ongoing (and speculative) financial harm from a religious accommodation as a coercive irreparable injury under Title VII—then that underscores why the full Court should grant United’s pending petition for rehearing en banc.

ARGUMENT

1. Most importantly, even apart from the factual errors, Plaintiffs' supplemental submission does not in any way undermine the legal basis for United's motion to dismiss the appeal as moot and vacate the panel opinion. As the panel majority repeatedly made clear, the question presented and decided on appeal was whether being "placed on unpaid leave indefinitely" as a religious accommodation under Title VII satisfies the irreparable-injury requirement for a preliminary injunction. Panel Op. 1; *accord id.* at 6 ("the district court erred as to the plaintiffs who remain on unpaid leave"); *id.* at 21 ("the ongoing coercion of ... los[ing] pay indefinitely"). Yet Plaintiffs' supplemental submission does not seriously contend that *that* question remains live.

Plaintiffs concede that Sambrano and Kincannon are no longer on unpaid leave and have returned to work. Sambrano Decl. ¶¶ 2-3; Kincannon Decl. ¶¶ 2-3. And they do not dispute that they have returned to their same positions (*i.e.*, a captain and a flight attendant, respectively) at the same pay rates (for both base pay and route-specific pay) and with the same benefits. *See* Nau Decl. ¶¶ 7-8; Krabbe Decl. ¶¶ 7-8.¹ Nor do either of them provide any basis to find a reasonable expectation that they will imminently be placed back on unpaid leave, and none exists.

¹ Although Sambrano (but not Kincannon) asserts a loss of seniority, Sambrano Decl. ¶¶ 5-6, that is false, and his assertion that he has been forced to bid for a less desirable flight option is highly misleading, *see* Nau Decl. ¶¶ 8-9.

Instead, Plaintiffs contend only that they are “effectively” being prevented from returning to their jobs in the peculiar sense that they are subject to temporary geographic travel restrictions that prohibit them from bidding for certain “lucrative” flight routes. Supp. Br. 1; *see* Sambrano Decl. ¶¶ 8, 10; Kincannon Decl. ¶¶ 6, 10. Setting aside for the moment that their objection is severely overstated, that is a fundamentally different basis for claiming irreparable injury than was presented and decided on appeal. It thus does not at all alter the conclusion that the current appeal is moot and the panel opinion should be vacated.

The Supreme Court held as much in *New York State Rifle & Pistol Ass’n v. City of New York*, [140 S. Ct. 1525](#) (2020) (per curiam). There, after the Second Circuit had rejected a challenge to a municipal rule prohibiting transportation of firearms to a second home or shooting range outside the city, and the rule was amended to permit such transportation while the case was pending in the Supreme Court, the challengers contended that the appeal was not moot because the new rule still prohibited taking rest stops en route to a second home or shooting range. *Id.* at 1526. The Court, however, vacated the judgment as moot and remanded for further proceedings, explaining that any “residual claim under the new framework” could be addressed on remand, after “vacat[ing] the judgment” below and providing the parties the opportunity, “if necessary, [to] amend their pleadings or develop the record more fully.” *Id.* So too here, Plaintiffs’ pure legal claim that unpaid leave

imposes irreparable injury is moot, and any new fact-intensive claim they wish to raise concerning the mere potential for decreased pay due to geographic travel restrictions should be raised on remand.

That is especially so because any potential diminution in pay does not constitute irreparable injury even under the panel majority’s opinion. The majority made clear that its holding rested on “los[ing] all pay and benefits indefinitely,” which purportedly was “an impossible choice” for those who “must put food on the table.” Panel Op. 18-19; *accord id.* at 19 (asserting that Sambrano and Kincannon were “deprived of all meaningful employment benefits”). In fact, the majority *declined* to “reverse the district court [on its no-irreparable-injury finding] as to any plaintiffs who have been provided other accommodations and are not on unpaid leave”—and that now includes Sambrano and Kincannon. *Id.* at 6 n.6.

The opinion contained this qualification for good reason. If the “ongoing coercion” theory were extended beyond unpaid leave to any continuing religious accommodation that may cause any diminution in pay, then the majority’s purported distinction between irreparable coercion and adverse employment actions redressable through backpay (*see id.* at 14-16) would become even more illusory than it already is, for all the reasons that Judge Smith and United have previously given. And an exponentially greater range of employment practices would become subject to intrusive preliminary-injunction litigation prior to final judgment, as

Plaintiffs' supplemental submission vividly illustrates. En banc review would thus be warranted *a fortiori*.

2. Plaintiffs' legal error is exacerbated by their misleading factual portrayal of the geographic travel restrictions imposed. That is so in two respects.

First, Sambrano and Kincannon vastly overstate the impact of the geographic travel restrictions. Although it is possible they may face some diminution in take-home pay because of a temporary inability to bid on certain flight routes—depending on which, and how many, other routes they bid on—they do not and cannot plausibly claim that any marginal difference will create an imminent and material coercive pressure to receive COVID-19 vaccinations in violation of their religious beliefs.

As for Sambrano, all of his trips in 2021 were either to domestic states or foreign countries to which he can still travel, with the exception of only two trips to Japan and one trip to South Africa. *See* Nau Decl. ¶¶ 10-11. Likewise, as for Kincannon, more than 75% of her trips in 2021 were to Hawaii, and there are still numerous international routes for which she can successfully bid. *See* Krabbe Decl. ¶¶ 8-9. It is thus unsurprising, and telling, that neither of them ever asserts that any diminution in take-home pay from the unavailability of certain trips is actually causing them to feel coercive pressure to receive COVID-19 vaccinations. Indeed, the only thing they are willing to expressly declare is that they are being “forc[ed] to choose” between their religious beliefs and maximizing their income, *not* that

there is any likelihood at all—much less an *imminent* prospect—that they will choose money over faith. *See* Sambrano Decl. ¶ 15; Kincannon Decl. ¶ 16.

It thus is even less defensible now than it previously was for their lawyers to impute to Sambrano and Kincannon a “coercion”-based irreparable injury that they themselves have studiously refused to declare under penalty of perjury. Likewise, the panel majority’s speculation that they may feel coercive pressure at some point in the future (*see* Panel Op. 19 n.14) is even less supportable now that they are objecting only to an inability to optimize flight routes and take-home pay, not the loss of all pay. Simply put, it is abundantly clear that they continue to seek a preliminary injunction merely to preserve their bank accounts during the pendency of litigation, not to protect their consciences, which will remain inviolate regardless.²

Second, Sambrano and Kincannon also vastly understate the complications their unvaccinated status poses due to foreign travel rules governing flight-crew members. To begin, while they concede that they cannot travel to countries that prohibit entry of unvaccinated flight-crew members, Supp. Br. 4, that concession applies to *sixteen* of the roughly three dozen countries at issue, *see* Nau Decl. ¶ 5;

² That is particularly obvious because, even while on unpaid leave, both of them declined preferred consideration for available non-customer-facing positions for which they met the minimum qualifications, and Sambrano even declined a non-customer-facing special assignment that had arisen and would have had the same hourly pay rate and benefits as his ordinary position. *See* D. Ct. Dkt. No. 137 at 86, 89-90, 93-94, 97.

Krabbe Decl. ¶ 5. Moreover, in several additional countries, unvaccinated crew members are technically allowed to enter but then prohibited from using hotels or transportation in ways that render it practically impossible for them to work. *See id.* And as for the remaining countries, there are onerous testing or quarantine rules that would interfere with United’s flight operations. *See id.* In short, while the foreign travel rules for *passengers* that Plaintiffs emphasize may be more lax or feasible for individuals to follow, *see* Supp. Br. 5, it is hardly “arbitrary” for United to focus on the more stringent and operationally challenging rules that some foreign countries impose for *employees of commercial airlines*, *see* Nau Decl. ¶ 6; Krabbe Decl. ¶ 6.

Plaintiffs do not acknowledge any of this. Either they do not know, or they fail to disclose it to this Court. Regardless, the factual reality underscores the wisdom of Judge Smith’s admonition that preliminary-injunctive relief is unwarranted in this context due to the “danger from inviting unelected judges to dictate, with so little proof and at this early stage, what measures a private business must take to confront an evolving pandemic.” Panel Op. 72. And more importantly for present purposes, the factual reality also belies Plaintiffs’ unfounded accusations that their return to work was a sham perpetrated by United merely to moot the appeal and obtain vacatur of the panel opinion. United has acted in good faith throughout: it allowed Sambrano and Kincannon (and other accommodated flight-crew members) to return to work because of the changed trajectory of the pandemic and public-

health guidance, and it has restricted their travel to certain destinations because of the legal limits and practical constraints concerning flight-crew members that have been imposed in many foreign countries. Any new dispute over these restrictions in no way means that there is still a live dispute over unpaid leave, which was the question presented and decided on appeal.

CONCLUSION

It remains the case that the appeal should be dismissed as moot and the panel opinion should be vacated, or alternatively that rehearing en banc should be granted.

April 13, 2022

Respectfully submitted,

/s/ Hashim M. Mooppan

Alexander V. Maugeri
JONES DAY
250 Vesey St.
New York, NY 10281
(212) 326-3939

Russell D. Cawyer
KELLY HART & HALLMAN LLP
201 Main St., Ste. 2500
Fort Worth, TX 76102
(817) 332-2500

Donald J. Munro
Hashim M. Mooppan
Lead Counsel
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 879-3939
hmmooppan@jonesday.com

Counsel for Defendant-Appellee

CERTIFICATE OF SERVICE

I certify that on April 13, 2022, I served a copy of the foregoing on all counsel of record by CM/ECF.

Dated: April 13, 2022

/s/ Hashim M. Mooppan
Hashim M. Mooppan
Counsel for Defendant-Appellee

CERTIFICATE OF COMPLIANCE

This response complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 27(d)(2)(A). Excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), the response contains 2,073 words and was prepared using Microsoft Word and produced in Times New Roman 14-point font.

Dated: April 13, 2022

/s/ Hashim M. Mooppan
Hashim M. Mooppan
Counsel for Defendant-Appellee

EXHIBIT A

No. 21-11159

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DAVID SAMBRANO, on their own behalf and on behalf of all others similarly situated; DAVID CASTILLO, on their own behalf and on behalf of all others similarly situated; KIMBERLY HAMILTON, on their own behalf and on behalf of all others similarly situated; DEBRA JENNEFER THAL JONAS, on their own behalf and on behalf of all others similarly situated; GENISE KINCANNON, on their own behalf and on behalf of all others similarly situated; SETH TURNBOUGH, on their own behalf and on behalf of all others similarly situated,

Plaintiffs-Appellants

v.

UNITED AIRLINES, INCORPORATED,

Defendant-Appellee

On Appeal from the United States District Court
for the Northern District of Texas
No. 4:21-cv-01074 (Pittman, J.)

DECLARATION OF SARAH NAU

I, Sarah Nau, declare as follows:

1. I currently serve as a Director of Labor Relations - Flight for United Airlines, Inc. (“United”). In my role, I have familiarity with the collective bargaining agreement that governs the terms and conditions of employment for United pilots. I have held this position since September 23, 2019. My responsibilities include managing the administration of the collective bargaining

agreement that cover pilots. I am, as a function of my responsibilities, familiar with a wide range of the issues that arise in connection with pilots.

2. I was involved in the recent process for returning unvaccinated pilots from leave, including the terms and conditions that would apply to the returning employees. In particular, I was involved in discussions regarding our policy for addressing restrictions imposed by foreign governments on unvaccinated flight crew.

3. I have reviewed the declaration submitted in the above-captioned matter by David Sambrano, who holds a position as a pilot, outlining his views of the limits on international service for unvaccinated crew. Captain Sambrano's portrayal of the facts regarding his return from leave is incorrect in many respects.

4. As a threshold matter, Captain Sambrano has inaccurately characterized United's policy regarding international travel for accommodated employees. As stated in the communication that went out to all affected employees, United's policy is intended to address external constraints imposed by foreign governments. *See* David Sambrano Declaration Exhibit C. These are not limits imposed by United, and the airline has and will continue to remove restricted countries from the list as they change their rules. For example, United recently removed Greece from the list of countries that unvaccinated pilots are prohibited

from traveling to, meaning that there are currently 31 countries to which we fly that impose rules that interfere with operations by unvaccinated pilots.

5. The chart attached below summarizes the countries to which United pilots cannot travel due to government restrictions and the nature of the government regulation. There are several different kinds of country rules regarding unvaccinated personnel that are problematic for flight operations. First, and most obviously, 16 of the 31 countries prohibit any entry by unvaccinated flight crew. Second, several countries allow unvaccinated crew to enter but prohibit use of hotels by unvaccinated personnel or similar restrictions that practically prevent travel of unvaccinated crew (e.g. unvaccinated individuals cannot ride in vehicles). Third, some countries impose onerous arrival and/or pre-departure testing or quarantine rules for unvaccinated crew. United could not comply with those regulations without risking flight delays and/or cancellations. (We explained various related problems with testing in United's briefing in the district court proceedings, *see* ECF Nos. 24, 77.) Finally, some countries effectively require quarantine or otherwise prohibit extraction of unvaccinated flight crew who test positive, meaning that we would be unable to get our employees out of the country if they fell ill while there. Any one of these limits would impose significant burdens on United if it tried to send unvaccinated crews to those countries.

6. Captain Sambrano implies that United has imposed restrictions on unvaccinated flight crew that are arbitrary or unnecessary, asserting that he could fly to many of the listed destinations as a tourist. Sambrano Declaration ¶ 9. However, he ignores the fact that the rules for the listed countries are often different for flight crew than for passengers. Moreover, constraints on passengers (such as quarantine rules or pre-departure testing) do not impose the same operational burdens and risks as the application of those rules to flight crew.

7. Captain Sambrano also mischaracterized his current work status. He says that the international flight restrictions prevent him from returning to his previous position. Sambrano Declaration ¶ 8. That is not so. Captain Sambrano's "position" is captain. That position does not come with any guaranteed routes, schedule, or pay (aside from the negotiated minimums in the collective bargaining agreement). Rather, under United's collective bargaining agreement with the union that represents pilots, Captain Sambrano's rights to any particular route, schedule, or pay is determined by month-by-month seniority-based bidding.¹ In other words, he can only work a particular route if he is awarded it in the monthly bidding process (or trades with another pilot). The bottom line is that Captain Sambrano has been returned to his position as a pilot, with the same seniority rights he had prior to going on leave, with all of his other benefits and privileges of employment intact.

¹ Captain Sambrano can also trade into or pick up trips.

8. Captain Sambrano is also wrong about his status on the B787. As an initial matter, contrary to Captain Sambrano's assertion (Sambrano Decl. ¶ 5), his seniority did not decrease – Captain Sambrano's seniority level is identical to when he went on unpaid leave. Second, had Captain Sambrano chosen to continue to fly the B787, he would bid and fly a regular schedule just like any other B787 pilot;² he would not be required to be on reserve. Given that Captain Sambrano is based in Newark, he would have been able to fly the B787 to all of the destinations that the B787 travels to out of that airport with the exception of destinations in Japan and South Africa. Thus, Captain Sambrano is *not* restricted to flying to domestic destinations.

9. Captain Sambrano's representations regarding why he opted to fly the B777 are also disingenuous. *See* Sambrano Decl. ¶ 6. First, most pilots consider flying the B777 to be an upward career move because the B777 is larger than the B787 – the B777 is the largest plane in United's fleet. Second, Captain Sambrano was awarded the B777 on March 15, 2022, *before* United announced any flight restrictions for unvaccinated pilots.

² If Captain Sambrano had returned to flying the B787 in mid-April, he would have been required to be on reserve for the remainder of the month of April, but only because he would have missed the bidding period for the month, not because of any restrictions placed on him due to being unvaccinated. Moreover, pilots on reserve get paid if they do not fly on their reserve days.

10. Captain Sambrano is one of United's most senior pilots and so has the option of bidding to any number of international routes that depart from his base in Newark. His available international destinations include most of Europe, including London, Paris, Amsterdam, Munich, Lisbon, and Frankfurt. He could also bid for flights to Israel or India. Moreover, through the electronic bidding system, Captain Sambrano has the ability to specifically select non-restricted international destinations to bid on.

11. It is also not true that Captain Sambrano "regularly flew" to South Africa and Japan. Sambrano Declaration ¶ 8. To the contrary, in 2021 Captain Sambrano only flew to South Africa once and Japan twice. All of the remainder of his trips were either to European countries to which he can still travel or domestic trips.

I declare under penalty of perjury that the foregoing is true and correct.



Sarah Nau

April 13, 2022

Date

Restricted Destinations for Pilots Due to Foreign-Government Imposed COVID-19 Restrictions³

Country	Nature of Imposed Restriction	Notes
Antigua	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Argentina	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Aruba	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Australia	Testing and other limitations.	Unvaccinated flight crew must, among other things, test on arrival and before departure, and isolate in government hotel facility.
Bahamas	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Barbados	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Bonaire	Testing limitations.	Pre-departure testing required.
Brazil	Vaccine required for hotels.	Unvaccinated flight crew could not reliably access lodging.
Canada	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
China	Vaccine date required for Shanghai electronic customs health declaration.	Unvaccinated flight crew may experience customs difficulties in Shanghai.
Colombia	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Federated States of Micronesia	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.

³ This information is current to the best of my knowledge as of the date of this declaration based on publicly available information about foreign country COVID-19 restrictions. This chart is merely a summary and is not intended to detail all of the nuances of each country's restrictions. Restrictions are dynamic and United continues to revise this list as foreign rules change.

French Polynesia	Testing and other limitations.	Unvaccinated flight crew must, among other things, test on arrival and before departure, and isolate in their hotel room.
Hong Kong	Unable to extract unvaccinated flight crews from destination.	Unvaccinated flight crews that test positive may be subject to quarantine in foreign medical facilities for at least 21 days.
India	Vaccine required for hotels and ground transportation.	Unvaccinated flight crew could not reliably access lodging and transportation.
Italy	Vaccine, proof of COVID-19 recovery, and/or in some circumstances testing required for hotels.	Unvaccinated flight crew could not reliably access lodging.
Japan	Testing limitations.	If United did not commit to Japan that all crews are vaccinated, flight crews on non U.S. mainland and cargo flights would be subject to testing.
Marshall Islands	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
New Zealand	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Nigeria	Testing and other limitations.	Unvaccinated flight crew must test and self-isolate for 7 days.
Palau	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Panama	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Peru	Vaccine required for any closed public space (<i>e.g.</i> , hotel check in or restaurants).	Unvaccinated flight crew could not reliably access lodging and meals.

Philippines	Certain flights require vaccine.	Flights between Koror, Palau and Manilla require vaccination due to Koror policy.
Singapore	Anticipated vaccine requirement.	Government of Singapore is expected to require that flight crew be vaccinated on the vaccine travel lane (VTL) flights United operates.
South Africa	Testing limitations.	Unvaccinated flight crews would be subject to testing within 72 hours of travel date.
St. Kitts	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
St. Maarten	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Taiwan	Difficult to extract unvaccinated flight crews from destination.	Unvaccinated flight crews would face challenges to secure expedited extraction approval. If United did not commit to Taiwan that all crews are vaccinated, flight crews would be subject to mandatory arrival testing.
Trinidad Tobago	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Turks & Caicos	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.

EXHIBIT B

No. 21-11159

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

DAVID SAMBRANO, on their own behalf and on behalf of all others similarly situated; DAVID CASTILLO, on their own behalf and on behalf of all others similarly situated; KIMBERLY HAMILTON, on their own behalf and on behalf of all others similarly situated; DEBRA JENNEFER THAL JONAS, on their own behalf and on behalf of all others similarly situated; GENISE KINCANNON, on their own behalf and on behalf of all others similarly situated; SETH TURNBOUGH, on their own behalf and on behalf of all others similarly situated,

Plaintiffs-Appellants

v.

UNITED AIRLINES, INCORPORATED,

Defendant-Appellee

On Appeal from the United States District Court
for the Northern District of Texas
No. 4:21-cv-01074 (Pittman, J.)

DECLARATION OF ROBERT KRABBE

I, Robert Krabbe, declare as follows:

1. I currently serve as a Director of Labor Relations - Flight for United Airlines, Inc. (“United”). I have been employed by United for 15 and a half years, and have served in my current position since 2016. My responsibilities include managing the administration of the collective bargaining agreement that covers flight attendants. I am, as a function of my responsibilities, familiar with a wide range of the issues that arise in connection with flight attendants.

2. I was involved in the recent process for returning unvaccinated flight attendants from leave, including the terms and conditions that would apply to the returning employees. In particular, I was involved in discussions regarding our policy for addressing restrictions imposed by foreign governments on unvaccinated flight crew.

3. I have reviewed the declaration submitted in the above-captioned matter by Genise Kincannon, who holds a position as a flight attendant, outlining her views of the limits on international service for unvaccinated crew. Ms. Kincannon's portrayal of the facts regarding her return from leave is incorrect in many respects.

4. As a threshold matter, Ms. Kincannon has inaccurately characterized United's policy regarding international travel for accommodated employees. As stated in the communication that went out to all affected employees, United's policy is intended to address external constraints imposed by foreign governments. *See* David Sambrano Declaration Exhibit C. These are not limits imposed by United, and the airline has and will continue to remove restricted countries from the list as they change their rules.

5. The chart attached below summarizes the countries to which United flight attendants cannot travel due to government restrictions and the nature of the government regulation. There are several different kinds of country rules regarding

unvaccinated personnel that are problematic for flight operations. First, and most obviously, 16 of the countries prohibit any entry by unvaccinated flight crew. Second, several countries allow unvaccinated crew to enter but prohibit use of hotels by unvaccinated personnel or similar restrictions that practically prevent travel of unvaccinated crew (e.g. unvaccinated individuals cannot ride in vehicles). Third, some countries impose onerous arrival and/or pre-departure testing rules for unvaccinated crew. United could not comply with those testing regimes without risking flight delays and/or cancellations. (We explained various related problems with testing in United's briefing in the district court proceedings, *see* ECF Nos. 24, 77.) Finally, some countries effectively require quarantine or otherwise prohibit extraction of unvaccinated flight crew who test positive, meaning that we would be unable to get our employees out of the country if they fell ill while there. Any one of these limits would impose significant burdens on United if it tried to send unvaccinated crews to those countries.

6. Ms. Kincannon implies that United has imposed restrictions on unvaccinated flight crew that are arbitrary or unnecessary, asserting that she could fly to many of the listed destinations as a tourist. Kincannon Declaration ¶ 7. However, she ignores the fact that the rules for the listed countries are often different for flight crew than for passengers. Moreover, constraints on passengers (such as

quarantine rules or pre-departure testing) do not impose the same operational burdens and risks as the application of those rules to flight crew.

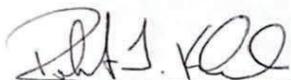
7. Ms. Kincannon has also mischaracterized her current work status. She says that the international flight restrictions “prohibit me from returning to the position I held” prior to going on leave. Kincannon Declaration ¶ 6. That is not so. Ms. Kincannon’s “position” is flight attendant. That position does not come with any guaranteed routes, schedule, or pay (aside from the negotiated minimums in the collective bargaining agreement). Rather, under United’s collective bargaining agreement with the union that represents flight attendants, Ms. Kincannon’s rights to any particular route, schedule, or pay is determined by month-by-month seniority-based bidding. In other words, she can only work a particular route if she is awarded it in the monthly bidding process (or picks up or trades into a trip with a particular routing). The bottom line is that Ms. Kincannon has been returned to her position as a flight attendant, with the same seniority rights she had prior to going on leave, with all of her other benefits and privileges of employment intact.

8. Ms. Kincannon is also wrong when she suggests that she cannot work any international flights (which she characterizes as always more lucrative) or is otherwise restricted to domestic routes. Kincannon Declaration ¶¶ 9-10. Ms. Kincannon is one of United’s most senior flight attendants and so has the option of bidding to any number of international routes that depart from her base in San

Francisco. Her available international destinations include most of Europe, including London, Paris, Amsterdam, Munich, and Frankfurt. She could also bid for flights to Israel or Korea. Many of those routes offer pay that is comparable to the Taipei route that Ms. Kincannon mentions in her declaration.

9. It is also not true that Ms. Kincannon worked exclusively as an international flight attendant prior to going on leave, as her declaration implies. Kincannon Declaration ¶ 9. To the contrary, more than 75 percent of her trips in 2021 were to Hawaii (the same destination that she now complains she is being “forced” to accept). And in prior years, she worked a mix of international and domestic routes.

I declare under penalty of perjury that the foregoing is true and correct.



Robert Krabbe

April 13, 2022

Date

Restricted Destinations for Flight Attendants¹ Due to Foreign-Government Imposed COVID-19 Restrictions²		
Country	Nature of Imposed Restriction	Notes
Antigua	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Argentina	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Aruba	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Australia	Testing and other limitations.	Unvaccinated flight crew must, among other things, test on arrival and before departure, and isolate in government hotel facility.
Bahamas	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Barbados	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Bonaire	Testing limitations.	Pre-departure testing required.
Brazil	Vaccine required for hotels.	Unvaccinated flight crew could not reliably access lodging.
Canada	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Chile	Unable to extract unvaccinated flight crews from destination.	Unvaccinated flight crews would face challenges to secure expedited extraction approval.

¹ This list includes three destinations that are not on the list of restricted destinations for pilots. These countries pose additional challenges for unvaccinated flight attendants that do not pose similar operational challenges for pilots.

² This information is current to the best of my knowledge as of the date of this declaration based on publicly available information about foreign country COVID-19 restrictions. This chart is merely a summary and is not intended to detail all of the nuances of each country's restrictions. Restrictions are dynamic and United continues to revise this list as foreign rules change.

China	Vaccine date required for Shanghai electronic customs health declaration.	Unvaccinated flight crew may experience customs difficulties in Shanghai.
Colombia	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Dominican Republic	Testing and other limitations.	Unvaccinated flight crews who have been in certain countries in the last 14 days must have a negative COVID test that was taken within 72 hours of arrival.
Federated States of Micronesia	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
French Polynesia	Testing and other limitations.	Unvaccinated flight crew must, among other things, test on arrival and before departure, and isolate in their hotel room.
Greece	Testing and other limitations.	Unvaccinated crew subject to pre-departure testing; entire crew must quarantine if one member of crew is unvaccinated.
Hong Kong	Unable to extract unvaccinated flight crews from destination.	Unvaccinated flight crews that test positive may be subject to quarantine in foreign medical facilities for at least 21 days.
India	Vaccine required for hotels and ground transportation.	Unvaccinated flight crew could not reliably access lodging and transportation.
Italy	Vaccine, proof of COVID-19 recovery, and/or in some circumstances testing required for hotels.	Unvaccinated flight crew could not reliably access lodging.
Japan	Testing limitations.	If United did not commit to Japan that all crews are vaccinated, flight crews on

		non U.S. mainland and cargo flights would be subject to testing.
Marshall Islands	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
New Zealand	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Nigeria	Testing and other limitations.	Unvaccinated flight crew must test and self-isolate for 7 days.
Palau	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Panama	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Peru	Vaccine required for any closed public space (<i>e.g.</i> , hotel check in or restaurants).	Unvaccinated flight crew could not reliably access lodging and meals.
Philippines	Certain flights require vaccine.	Flights between Koror, Palau and Manilla require vaccination due to Koror policy.
Singapore	Anticipated vaccine requirement.	Government of Singapore is expected to require that flight crew be vaccinated on the vaccine travel lane (VTL) flights United operates.
South Africa	Testing limitations.	Unvaccinated flight crews would be subject to testing within 72 hours of travel date.
St. Kitts	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
St. Maarten	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Taiwan	Difficult to extract unvaccinated flight crews from destination.	Unvaccinated flight crews would face challenges to secure expedited extraction

		approval. If United did not commit to Taiwan that all crews are vaccinated, flight crews would be subject to mandatory arrival testing.
Trinidad Tobago	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.
Turks & Caicos	Vaccine required for entry.	Unvaccinated flight crew cannot enter country.