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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 ANDREW J. BRIGIDA, on behalf of )  
17 himself and the Class he seeks to represent,) Case No. 2:15-cv-02654-DLR  
18 )  
19 Plaintiff, )

20 v. )

21 UNITED STATES DEPARTMENT OF )  
22 TRANSPORTATION; ANTHONY R. )  
23 FOXX, Secretary, U.S. Department of )  
24 Transportation; FEDERAL AVIATION )  
25 ADMINISTRATION; MICHAEL )  
26 HUERTA, Administrator, Federal Aviation )  
27 Administration; STEPHANIE JONES, )  
28 Acting Director, Departmental Office of )  
Civil Rights, U.S. Department of )  
Transportation, )

Defendants. )

**SECOND AMENDED AND  
SUPPLEMENTAL CLASS ACTION  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES  
DEMAND FOR JURY TRIAL**

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Pursuant to Federal Rules of Civil Procedure 15(a)(2) and 15(d), and this Court’s August 2, 2016 Order, Plaintiff, Andrew J. Brigida, by and through his attorneys, hereby files this Second Amended and Supplemental Class Action Complaint for Declaratory and Injunctive Relief and Damages against the above-named Defendants on behalf of himself and the Class he seeks to represent.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction, pursuant to 28 U.S.C. § 1331, because the matter in controversy arises under the Constitution and laws of the United States, including but not limited to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the Fifth Amendment to the United States Constitution.

2. Venue rests properly in this Court, pursuant to 28 U.S.C. § 1391(e), because “a substantial part of the events . . . giving rise to the claim occurred” within this judicial district.

**PARTIES**

3. Plaintiff, Andrew J. Brigida, is a current resident of Arlington, Virginia. He brings this action on behalf of himself individually, and on behalf of a Class of persons similarly situated as described below.

4. Defendant United States Department of Transportation (“DOT”) is a cabinet-level department within the Executive Branch of the federal government. Through its various agencies, the DOT promulgates regulations and policies governing transportation within the United States, including aviation.



1 religion, sex, or national origin. 42 U.S.C. § 2000e; *Ricci v. DeStefano*, 557 U.S. 557,  
2 577 (2009).

3 10. Specifically, Title VII provides that it is unlawful employment  
4 discrimination “to fail or refuse to hire or to discharge any individual, or otherwise to  
5 discriminate against any individual with respect to his compensation, terms, conditions,  
6 or privileges of employment, because of such individual’s race, color, religion, sex, or  
7 national origin.” 42 U.S.C. § 2000e-2(a)(1).  
8

9  
10 11. Title VII prohibits discrimination against employees of, and applicants for  
11 employment in, the federal government. 42 U.S.C. § 2000e-16.

12 12. Absent a valid defense, Title VII prevents a government agency from  
13 refusing to accept the outcome of a race-neutral hiring process solely because of the  
14 racial makeup of the successful applicants. *See Ricci*, 557 U.S. at 579.

15  
16 13. Specifically, a government agency may not disregard the outcome of a  
17 race-neutral hiring process unless it has a “strong basis in evidence to believe it will be  
18 subject to disparate-impact liability if it fails to take the race-conscious, discriminatory  
19 action.” *See id.* at 585. An agency will be liable for disparate-impact discrimination only  
20 if a hiring process is not job related and consistent with business necessity, or if there  
21 exists an equally valid, less discriminatory alternative that served the needs of the agency  
22 but the agency refused to adopt. *Id.* at 547.

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24  
25 **B. EQUAL PROTECTION COMPONENT OF THE DUE PROCESS CLAUSE**  
26 **OF THE FIFTH AMENDMENT.**

27 14. The Due Process Clause of the Fifth Amendment to the United States  
28

1 Constitution provides that “[n]o person shall be . . . deprived of life, liberty, or property,  
2 without due process of law . . . .” U.S. Const. amend. V.

3  
4 15. Like the Equal Protection Clause of the Fourteenth Amendment, the Due  
5 Process Clause of the Fifth Amendment protects persons from race-based discrimination  
6 by the federal government. *Buckley v. Valeo*, 424 U.S. 1, 93 (“Equal protection analysis  
7 in the Fifth Amendment area is the same as that under the Fourteenth Amendment . . .”).  
8

9 16. The equal protection component of the Due Process Clause of the Fifth  
10 Amendment is self-executing and a person can assert a cause of action directly under the  
11 Clause. *Bolling v. Sharpe*, 347 U.S. 497, 498–500 (1954); *Davis v. Passman*, 442 U.S.  
12 228, 242–43 (1979).  
13

14 17. A government-imposed racially discriminatory preference is constitutional  
15 only if the government demonstrates that the preference was necessary to achieve a  
16 compelling state interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).  
17

18 18. Governments may use racially discriminatory preferences only in  
19 remedying “extreme” cases of “systematic[.]” patterns of deliberate racial discrimination  
20 to “break down patterns of deliberate exclusion.” *City of Richmond v. J.A. Croson Co.*  
21 488 U.S. 469, 509 (1989) (“*Croson*”).  
22

23 19. Therefore, in order to establish a compelling interest, the government must  
24 “identify” the invidious discrimination to be remedied “with some specificity before [it]  
25 may use race-conscious relief . . . .” *Croson*, 488 U.S. 505. A mere showing of disparity  
26 in not sufficient to demonstrate extreme cases of systematic patterns of deliberate racial  
27 discrimination. *Western States Paving Co. v. Washington State Dept. of Transp.*, 407  
28

1 F.3d 983, 1000 (9th Cir. 2005) (“This oversimplified evidence is entitled to little weight,  
2 however, because it does not account for factors that may affect the relative capacity of  
3 [Disadvantaged Business Enterprises] to undertake contracting work.”); *Associated*  
4 *General Contractors of Ohio, Inc. v. Drabik*, 214 F.3d 730, 736 (6th Cir. 2000).  
5 (“[E]vidence of mere statistical disparities has been firmly rejected as insufficient by the  
6 Supreme Court, particularly in a context such as contracting, where special qualifications  
7 are so important.”).

8  
9  
10 20. Federal courts have the jurisdiction and authority to grant necessary relief  
11 to protect rights safeguarded by the U.S. Constitution, including the right to equal  
12 protection protected by the Due Process Clause of the Fifth Amendment. *See Bell v.*  
13 *Hood*, 327 U.S. 678, 683–84 (1946); *Larson v. Domestic & Foreign Commerce Corp.*,  
14 337 U.S. 682, 690 (1949); *Davis*, 442 U.S. at 242–43 (1979).

## 15 FACTUAL BACKGROUND

### 16 **A. FAA’s Change In Hiring Practices For Air Traffic Controllers.**

17  
18  
19 21. In 1989, the FAA published the *Flight Plan for Training*. This publication  
20 proposed a new system to implement and support air traffic controller recruiting,  
21 selection, and training programs.

22  
23 22. In January 1991, the FAA promulgated FAA Order 3120.26, which  
24 established the Air Traffic-Collegiate Training Initiative (“CTI”) program to develop,  
25 deliver, and implement air traffic control recruiting, selection, and training. The CTI  
26 program began with 5 schools around the country.

27  
28 23. The objective of the CTI program was to develop a professional air traffic

1 controller workforce that possessed the skills necessary to succeed in training at a lower  
2 cost to the government.

3           24. In order to achieve the objectives of the CTI program, the FAA entered into  
4 partnership agreements with colleges, universities and other schools (“CTI Institutions”)  
5 in order to administer CTI programs throughout the country.

6  
7           25. In 2012, there were 36 CTI Institutions around the country.

8  
9           26. Graduates from these CTI programs were required to pass a validated air  
10 traffic aptitude test, known as the Air Traffic Control Selection and Training examination  
11 (“AT-SAT”) in order to be eligible for employment as a trainee controller.

12  
13           27. The AT-SAT is an aptitude assessment test developed to assess the  
14 likelihood of an applicant successfully learning Air Traffic Control Specialist (“ATCS”)  
15 skills as well as a valid predictor of achievement of Certified Professional Controller  
16 (“CPC”) status and air traffic controller job performance. CPC status is achieved after  
17 the successful completion of air traffic training.

18  
19           28. The AT-SAT tests for characteristics needed to effectively perform as an air  
20 traffic controller. The characteristics include numeric ability, prioritization, planning,  
21 tolerance for high intensity, decisiveness, visualization, problem-solving, and movement  
22 detection.

23  
24           29. The FAA developed the AT-SAT in approximately 2000-2001 in order to  
25 provide a selection tool for new applicants for ATCS positions within the FAA.

26  
27           30. Since the FAA first instituted the AT-SAT, it has been validated multiple  
28 times to ensure the test was in accord with the law and professional guidelines. The AT-

1 SAT was most recently validated in March of 2013.

2 31. Prior to 2014, and after the introduction of the CTI program, graduates  
3 from CTI programs that passed the validated AT-SAT assessment entered a direct hire  
4 pool of applicants, were placed on a “Qualified Applicant Register” List, and were given  
5 hiring preference for ATCS positions.  
6

7 32. Prior to the introduction of the CTI program, the FAA hired from two main  
8 sources. First, the FAA hired from military trained controllers (“Veteran’s Recruitment  
9 Appointment” or “VRAs”), who had separated or retired from military service. Second,  
10 the FAA hired through General Public Announcement (“GPA”), commonly referred to as  
11 Off-the-Street (“OTS”) hiring.  
12

13 33. OTS hiring most often resulted in candidates lacking air traffic control or  
14 college experience.  
15

16 34. The FAA identified additional problems with ~~the~~ OTS hiring ~~program~~.  
17 Besides being expensive to administer, the FAA deemed the quality of candidates  
18 unsatisfactory and noted high training failure (“washout”) rates with OTS applicants. As  
19 a result of these issues, the FAA developed the CTI program.  
20

21 35. Since the CTI program was instituted, most air traffic controller hiring has  
22 been from the pool of CTI graduates and VRAs.  
23

24 36. In 2005, the FAA forecast a controller shortage due to a large number of  
25 controllers who were becoming eligible for retirement. This retirement eligible group  
26 had been hired after the 1981 Professional Air Traffic Controllers Organization strike.  
27

28 37. The CTI schools were unable to keep up with the increased demand for



1 replacement controllers and, as a result, the FAA made an OTS hiring announcement to  
2 supplement the VRA and CTI applicant pools.

3 38. At the end of 2012, the FAA announced that it would not be conducting  
4 any further OTS hiring because the CTI schools, along with the VRA applicant pool,  
5 were producing sufficient quantities of qualified applicants to fulfill demand.  
6

7 39. The FAA controller hiring plan required the FAA to hire over one thousand  
8 controllers per year in calendar years 2012, 2013, and 2014. Despite this stated demand  
9 for ATCS, the FAA slowed and eventually froze the processing and hiring of new ATCS  
10 applicants.  
11

12 40. The CTI program, and VRA applicant pool, met the stated demand for  
13 ATCS and successfully prepared air traffic control applicants, including minority  
14 candidates, for ATCS positions.  
15

16 41. In 2013, the FAA published an employment plan that provided that the  
17 FAA was “planning to open a general public announcement in FY 2014 to add more  
18 depth and diversity to our controller hiring sources.” Federal Aviation Administration, *A*  
19 *Plan for the Future: 10-Year Strategy for the Air Traffic Control Workforce 2013-2022*  
20 44 (2013), available at [https://www.faa.gov/air\\_traffic/publications/controller\\_staffing/](https://www.faa.gov/air_traffic/publications/controller_staffing/media/CWP_2013.pdf)  
21 [media/CWP\\_2013.pdf](https://www.faa.gov/air_traffic/publications/controller_staffing/media/CWP_2013.pdf) (last visited December 30, 2015).  
22  
23

24 42. On February 8, 2013, Terry Craft, the FAA’s CTI program manager, sent  
25 an e-mail to CTI schools in which he stated he believed that the CTI applicant pool was  
26  
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28

1 diverse.<sup>1</sup>

2 43. Also in February 2013, the FAA published a report on the CTI program that  
3 provided that “it is clear that the FAA AT-CTI schools are making great strides to  
4 incorporate minority students and faculty into their programs . . . .” Federal Aviation  
5 Administration, *Air Traffic Collegiate Training Initiative (AT-CTI) Partner School  
6 Diversity and Outreach 2012-13* 1 (February 25, 2013), available at  
7 <http://www.ctiassociation.org/app/download/2351245/AT-CTI+Diversity+and+Outreach>  
8  
9 [+Complete+Report.pdf](#) (last visited August 18, 2016).

10  
11 44. In 2012-2013, 11.5 percent of CTI school enrollees were African-  
12 American. *Id.* at 3. This percentage of African-American enrollees exceeded the  
13 percentage of African Americans in the civilian labor workforce pool in the same years.  
14 United States Office of Personnel Management, *Federal Equal Opportunity Recruitment  
15 Program (FEORP) for Fiscal Year 2012 Report to the Congress* 8 (January 2014),  
16 available at [https://www.opm.gov/policy-data-oversight/diversity-and-](https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports/feorp-2012.pdf)  
17 [inclusion/reports/feorp-2012.pdf](https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reports/feorp-2012.pdf) (last visited August 18, 2016).

18  
19 45. On information and belief, and after a reasonable opportunity for discovery,  
20 CTI institutions were providing a sufficiently diverse applicant pool to the FAA for  
21 ATCS positions.

22  
23 46. On information and belief, and after a reasonable opportunity for discovery,  
24 the FAA’s own evidence showed that CTI institutions were providing a sufficiently  
25 diverse applicant pool to the FAA for ATCS positions.  
26  
27

28 <sup>1</sup> A copy of this e-mail is attached hereto as Exhibit 1.

1           47. On or around December 30, 2013, Joseph Teixeira, the FAA’s Vice  
2 President for Safety and Technical Training, sent an e-mail (“Teixeira e-mail”) to the CTI  
3 schools about the future of hiring for ATCS positions.<sup>2</sup>  
4

5           48. The Teixeira e-mail provided, *inter alia*, that “[r]ecently, the FAA  
6 completed a barrier analysis of the ATC occupation pursuant to the Equal Employment  
7 Opportunity Commission’s (EEOC) Management Directive 715. As a result of the  
8 analysis, recommendations were identified that we are implementing to improve and  
9 streamline the selection of ATC candidates.”  
10

11           49. The Teixeira e-mail further provided “[a] nationwide competitive FG-01  
12 vacancy announcement open to all U.S. Citizens will be issued in February 2014. Any  
13 individual desiring consideration for employment (including CTI graduates) MUST  
14 apply. Existing inventories of past applicants will not be used.”  
15

16           50. The Teixeira e-mail also provided that “[t]he existing testing process has  
17 been updated. The revised testing process is comprised of a biographical questionnaire  
18 (completed as part of the application process) and the cognitive portion of the AT-SAT.  
19 The cognitive portion of the AT-SAT will be administered only to those who meet the  
20 qualification standards and pass the biographical questionnaire. Applicants for the  
21 February 2014 announcement will be required to take and pass the new assessments in  
22 order to be referred on for a selection decision.”  
23  
24

25           51. On information and belief, and after a reasonable opportunity for discovery,  
26 the FAA failed to validate the biographical questionnaire to ensure the test was in accord  
27

28 <sup>2</sup> A copy of the Teixeira e-mail is attached hereto as Exhibit 2.

1 with the law and professional guidelines.

2 52. In sum, on or around December 30, 2013, the FAA eliminated the CTI  
3 Applicant Register, which resulted in Plaintiff Brigida, and other putative Class  
4 Members, losing their employment preference and opportunity.  
5

6 53. The FAA subsequently scheduled a teleconference with the CTI schools on  
7 January 8, 2014.  
8

9 54. During the January 8, 2014 teleconference, Teixeira stated that “there were  
10 no special interest groups involved in the design of the [new] FAA policy at all. This was  
11 done by experts in the human resources department and civil rights . . . .”  
12

13 55. During the January 8, 2014 teleconference, Teixeira also stated that “[w]e  
14 really have not announced these changes to anyone other than to CTI schools, and you  
15 received that for the first time on the 30th of December. There’s been no announcement .  
16 . . . .”  
17

18 56. On information and belief, and after a reasonable opportunity for discovery,  
19 several members of the FAA Human Resources (“HR”) and Civil Rights (“CR”) Offices  
20 had notified, *inter alia*, the National Black Coalition of Federal Aviation Employees  
21 (“NBCFAE”), and other select special interest groups, that the FAA was going to  
22 eliminate the Qualified Applicant Register prior to the announcement to the CTI  
23 institutions, as well as specific detailed information on the FAA’s new hiring practices.  
24

25 57. On information and belief, and after a reasonable opportunity for discovery,  
26 several members of the FAA HR and CR Offices had been working with the NBCFAE to  
27 eliminate the CTI Qualified Applicant Register since 2010.  
28

1           58. On June 20, 2013, FAA officials met with members of the FAA National  
2 Employee Association Forum, which is composed of eight employee associations that  
3 represent various minority, women, and disadvantaged sub-groups, including NBCFAE.  
4 The stated purpose of this meeting was to brief the various employee associations of  
5 recommended changes in the Air Traffic Controller hiring process.  
6

7           59. Among the persons conducting the June 2013 briefing was an FAA  
8 consultant named Dr. James Outtz. Dr. Outtz presented information about a recently  
9 concluded Barrier Analysis of the FAA Air Traffic Controller hiring process. Dr. Outtz  
10 stated that the FAA's hiring process purportedly had a disparate impact on minority  
11 candidates, primarily African-American males.  
12

13           60. Several documents demonstrate that the NBCFAE had information on how  
14 applicants for the February 2014 announcement could increase their chances of  
15 advancing in the hiring process.<sup>3</sup> The NBCFAE e-mailed their members with advice on  
16 how to apply for the open Air Traffic Controller positions. *See* Exhibits 7–8. This  
17 information was provided by a FAA HR employee who was also a member of the  
18 NBCFAE. *See* Exhibit 7.  
19

20           61. These documents further demonstrate that NBCFAE National President  
21 Roosevelt Lenard, Jr. was in contact with senior FAA officials, including Carolyn  
22 Bostick, the FAA management official in charge of human resources (“AHR-1”), about  
23 Lenard's desire to eliminate the entire Qualified Applicant Register. *See* Exhibit 8.  
24

25           62. On or about January 27, 2015, FAA HR Official Bostick assured NBCFAE  
26

27  
28 <sup>3</sup> Copies of these documents are attached hereto as Exhibits 3 through 9.

1 National President Lenard that the Register would be “purged” and none of these post-  
2 assessment applicants would be offered a letter of employment. *Id.*

3 63. On information and belief, and after a reasonable opportunity for discovery,  
4 numerous FAA employees and officials are active members of the NBCFAE.  
5

6 64. In February 2014, FAA spokesman Tony Molinaro, Public Affairs Officer  
7 for the FAA in the Great Lakes and Central Regions, stated that the decision to change  
8 the FAA’s hiring process for Air Traffic Controllers was made to “add diversity to the  
9 workforce.” Anna Burlison, *Want to be an air traffic controller? UND says FAA has*  
10 *‘dumbed down the process’*, Grand Forks Herald, March 5, 2014, available at  
11 <http://www.grandforksherald.com/content/want-be-air-traffic-controller-und-says-faa->  
12 [has-dumbed-down-process](http://www.grandforksherald.com/content/want-be-air-traffic-controller-und-says-faa-) (last visited August 19, 2016).  
13  
14

15 65. Various other FAA officials and employees initially stated that the change  
16 in the hiring process was for diversity purposes.  
17

18 66. On information and belief, and after a reasonable opportunity for discovery,  
19 there were approximately 2,000 to 3,500 qualified applicants that possessed a degree  
20 from a CTI school, had passed the AT-SAT, and were on the FAA’s Qualified Applicant  
21 Register prior to the FAA’s 2014 decision to eliminate the Register. Plaintiff and  
22 putative Class Representative Brigida was one of those qualified applicants.  
23

24 67. On July 15, 2016, Congress passed the FAA Extension, Safety, and  
25 Security Act of 2016 which, *inter alia*, addressed the hiring of ATCS positions by the  
26 FAA. FAA Extension, Safety, and Security Act of 2016, Pub. L. 114-190, Section 2106,  
27 130 Stat. 615, 620 (July 15, 2016), *codified at* 44 U.S.C. § 44506.  
28

1           68.    The Act provides that the FAA should give preferential treatment for ATCS  
2 positions to qualified individuals maintaining 52 consecutive weeks of civilian or military  
3 air traffic control experience. 44 U.S.C. § 44506(f)(1)(A).  
4

5           69.    For any remaining open ATCS positions, the FAA is then required to hire  
6 equally from two applicant pools. 44 U.S.C. § 44506(f)(1)(B)(i).  
7

8           70.    The first pool consists of: (1) CTI graduates who have received  
9 recommendations from their institution; (2) honorably discharged veterans eligible for a  
10 recruitment appointment pursuant to section 4214 of title 38; (3) eligible veterans  
11 “maintaining aviation experience obtained in the course of the individual's military  
12 experience”; and (4) preference eligible veterans. 44 U.S.C. § 44506(f)(1)(B)(ii)  
13

14           71.    The second pool consists of OTS applicants. 44 U.S.C. §  
15 44506(f)(1)(B)(ii).  
16

17           72.    Although the Act prevents the FAA from using the biographical  
18 questionnaire on applicants from the first pool of applicants (as well as those with  
19 previous air traffic control experience), it does not prevent the FAA from using the  
20 biographical questionnaire on OTS hires. 44 U.S.C. § 44506(f)(2)(A).  
21

22           73.    Accordingly, the revised hiring practices restricts the number of CTI  
23 graduates that can be appointed to ATCS positions, and requires approximately half of  
24 appointments to come from OTS applicants. 44 U.S.C. § 44506(f)(1)(B)(i).  
25

26           74.    Although the Act provides that the FAA shall “provide . . . an opportunity  
27 to reapply” for an ATCS position under the “revised hiring practices” for any applicant  
28 that “was disqualified from the position as the result of a biographical assessment,” the

1 Act does not require the FAA to make any specific hiring or appointment decisions with  
2 respect to any CTI graduates that were on the FAA's Qualified Applicant Register prior  
3 to the FAA's 2014 decision. 44 U.S.C. § 44506(f)(2)(B)(i). Specifically, under the Act,  
4 the FAA is not required to give hiring preference to, or refer for appointment, any CTI  
5 graduate who was disqualified based on the biographical questionnaire. *Id.*

7 75. Furthermore, the Act provides no compensation for the CTI graduates that  
8 were on the FAA's Qualified Applicant Register prior to the FAA's 2014 decision to  
9 eliminate the Register.

11 **B. Plaintiff Brigida.**

12 76. On May 13, 2013, while attending an FAA approved CTI Institution,  
13 Arizona State University ("ASU"), Plaintiff Brigida took, and successfully passed the  
14 AT-SAT assessment with the top numerical score possible of 100%.

16 77. On August 13, 2013, Plaintiff Brigida graduated from ASU, and was  
17 recommended to the FAA by ASU on August 28, 2013.

19 78. Subsequently, the FAA placed Plaintiff Brigida on the Qualified Applicant  
20 Register.

21 79. On or about January 27, 2014, while Plaintiff Brigida was residing in  
22 Arizona, the FAA informed Plaintiff Brigida of the changes to the Air Traffic Controller  
23 hiring process, that the Qualified Applicant Register was being eliminated, and that Mr.  
24 Brigida would need to reapply under the new hiring process if he wished to be considered  
25 for an Air Traffic Controller position.

27 80. On February 10, 2014, while residing in Arizona, Plaintiff Brigida  
28



1 reapplied for an Air Traffic Controller position under the new hiring processes. While  
2 reapplying for the position, Plaintiff Brigida took the Biographical Questionnaire.

3 81. On February 25, 2014, while residing in Arizona, Plaintiff Brigida  
4 contacted an Equal Employment Opportunity (“EEO”) counselor for the DOT by filing  
5 an informal electronic complaint, and alleged that the FAA discriminated against him on  
6 the basis of race and gender by changing its Air Traffic Controller hiring practice in order  
7 to achieve more diversity.  
8

9  
10 82. On February 27, 2014, the FAA notified Plaintiff Brigida, who was residing  
11 in Arizona, that he had failed the biographical questionnaire and was ineligible to be  
12 hired for an Air Traffic Controller position.  
13

14 83 On March 31, 2014, Plaintiff Brigida, while residing in Arizona, received  
15 his notice of right to file a formal EEO Complaint with the DOT.  
16

17 84. On April 12, 2014, Plaintiff Brigida, while residing in Arizona, filed a  
18 formal EEO Complaint, individually and as a putative Class Representative on behalf of  
19 those similarly situated, with the DOT.<sup>4</sup>  
20

21 85. On April 16, 2014, the DOT sent a letter to Plaintiff Brigida which  
22 acknowledged receipt of the formal EEO Complaint and provided that the Complaint was  
23 forwarded to the EEOC for their recommendation to accept or reject the Complaint.  
24

25 86. On June 30, 2016, Administrative Judge Cynthia G. McKnight dismissed  
26 Plaintiff Brigida’s EEO Complaint without prejudice under 29 C.F.R. § 1614.409 as a  
27 result of the filing of this action.  
28

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<sup>4</sup> Plaintiff Brigida’s formal EEO Complaint is incorporated by reference herein.



1 new hiring practice for Air Traffic Controllers, which adversely affected all Class  
2 members. Defendants' motivation and purported evidence for the decision is common to  
3 all Class members.  
4

5 91. Typicality. Plaintiff Brigida's claims for the remedies stated herein are  
6 typical of the claims of all members of the putative Class because all members of the  
7 prospective Class sustained similar injuries and damages arising out of Defendant's  
8 common course of unlawful conduct. The injuries and damages of all members of the  
9 Class were caused by the FAA's single decision to purge the Qualified Applicant  
10 Register and adopt a new hiring practice for Air Traffic Controllers.  
11

12 92. Numerosity. The potential quantity of members of the putative Class as  
13 defined is so numerous that joinder of all members would be unfeasible and impractical.  
14 The disposition of their claims through this class action will benefit both the parties and  
15 this Court. While the exact quantity of members of the Class is unknown at this time, it  
16 is estimated that Class number is in excess of 2,000 individuals. The quantity and  
17 identity of such membership is easily ascertainable through inspection of Defendants'  
18 records.  
19

20 93. Adequacy. Plaintiff Brigida is an adequate representative of the putative  
21 Class and as Class Representative will fairly protect the interests of the members of the  
22 Class, has no interests antagonistic to the members of the Class, and will vigorously  
23 pursue this suit via attorneys who are competent, skilled and experienced in litigating  
24 complex matters of this type. Putative Class Counsel are competent and experienced in  
25 litigating large cases, are preeminent in their fields, and members of the firms have  
26  
27  
28

1 experience in litigating complex matters including employment and constitutional law  
2 cases. Approximately 270 potential Class members have contacted Plaintiff's legal  
3 counsel and approximately 151 have filed informal EEO Complaints with the FAA listing  
4 Plaintiff's legal counsel as potential legal counsel. Approximately 34 potential class  
5 members graduated from CTI Institutions in Arizona and/or reside in Arizona.  
6

7 94. Ascertainable Class. The proposed Class and each subclass are  
8 ascertainable in that their members can be identified and located using information  
9 contained in Defendants' records. Specifically the FAA's Aviation Careers Division  
10 maintained an inventory of eligible CTI graduates and the Qualified Applicant Register  
11 comprised of the putative class.  
12

13 95. Superiority. The nature of this action and the questions of law or fact  
14 common to Class members predominate over any questions affecting only individual  
15 members. A class action is superior to other available methods for fairly and efficiently  
16 adjudicating this controversy for the following reasons, without limitation:  
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18

19 a. This case involves federal agencies and officials and a sufficient  
20 numerous group of individual Class Members with many claims and  
21 common issues of law and fact;  
22

23 b. If each individual member of the Class was required to file an  
24 individual lawsuit, Defendants would necessarily gain an unjust advantage  
25 because Defendants would be able to exploit and overwhelm the limited  
26 resources of each individual member of the Class with Defendants' vastly  
27 superior financial and legal resources;  
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c. Requiring each individual member of Class to pursue an individual lawsuit would discourage the assertion of lawful claims by the members of the Class who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;

d. Proof of a common practice or factual pattern, of which the members of the Class experienced, is representative of the Class herein and will establish the right of each of the members of the Class to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the Class, even if possible, would create a substantial risk of inconsistent or varying adjudications with respect to the individual members of the Class against Defendants; and which would establish potentially incompatible standards of conduct for Defendants;

f. Many members of the putative Class are recent college graduates with large student loan balances and the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs, while an important public interest will be served by addressing the matter as a Class Action; and

g. The cost to the judicial system of such individualized litigation would be substantial and a waste of valuable adjudicative and judicial resources.





1           107. Accordingly, the FAA's actions constituted intentional racial  
2 discrimination. See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,  
3 265 (1977); *Shaw v. Reno*, 509 U.S. 630, 643, (1993).  
4

5           108. The FAA's racially discriminatory actions were not narrowly tailored to  
6 achieve a compelling state interest.

7           109. Specifically, the FAA, prior to implementing its racially discriminatory  
8 hiring policy, did not have evidence that the CTI program failed to produce a racially  
9 diverse applicant pool for Air Traffic Controllers.  
10

11           110. Assuming, *arguendo*, that the FAA had evidence that the CTI program  
12 failed to produce a racially diverse applicant pool for Air Traffic Controllers, the FAA  
13 did not have a strong basis in evidence that this purported disparate impact was a result of  
14 previous systematic patterns of deliberate racial discrimination within the agency.  
15

16           111. Therefore, the FAA's purging of the Qualified Applicant Register and  
17 adoption of a new hiring practice for Air Traffic Controllers were not made to remedy an  
18 extreme case of systematic patterns of deliberate racial discrimination. *Croson*, 488 U.S.  
19 at 509.  
20

21           112. Accordingly, the FAA's purging of the Qualified Applicant Register and  
22 adoption of a new hiring practice for Air Traffic Controllers violated the Equal Protection  
23 Component of the Due Process Clause of the Fifth Amendment.  
24

25           113. Plaintiff Brigida and other putative Class Members are entitled to an order  
26 declaring the FAA's actions unconstitutional, and an order directing the FAA to reinstate  
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1 the Qualified Applicant Register and give hiring preference to Plaintiff Brigida and other  
2 putative Class Members.

3 114. Additionally, Plaintiff Brigida and other putative Class Members are  
4 entitled to damages, to be determined at trial, including, but not limited to, back pay,  
5 front pay, hiring, and reinstatement.  
6

7 **PRAYER FOR RELIEF**

8  
9 WHEREFORE, Plaintiff Brigida, on behalf of himself and the Class he seeks to  
10 represent, respectfully requests that this Court:

11 1. Declare that the FAA's racially motivated purging of the Qualified  
12 Applicant Register and adoption of a new hiring practice for Air Traffic Controllers  
13 violated Title VII of the Civil Rights Act of 1964;  
14

15 2. Declare that the FAA's racially motivated purging of the Qualified  
16 Applicant Register and adoption of a new hiring practice for Air Traffic Controllers  
17 violated the Equal Protection Component of the Due Process Clause of the Fifth  
18 Amendment;  
19

20 3. Enter an order directing the FAA to reinstate the purged Qualified  
21 Applicant Register and give hiring preference to Plaintiff Brigida and other putative Class  
22 Members;  
23

24 3. Award Plaintiff Brigida and other putative Class Members damages  
25 including, but not limited to, back pay, front pay, hiring, and reinstatement, the amounts  
26 of which are to be determined at trial;  
27  
28



**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of August 2016, I caused a true and correct copy of the foregoing **SECOND AMENDED AND SUPPLEMENTAL CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES** to be electronically filed with the Clerk of the Court using the Court’s CM/ECF system which sent notification of such filing to the following counsel of record in this matter:

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Arjun.garg@usdoj.gov

/s/ Jeffrey Wilson McCoy  
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Attorney for Plaintiff Andrew Brigida and Putative Class Counsel

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