

Brigida, et al. v. Peter P.M. Buttigieg

HOME / BRIGIDA, ET AL. V. PETER P.M. BUTTIGIEG

Notice of Pendency of Class Action

YOU ARE RECEIVING THIS NOTICE TO MAKE YOU AWARE OF A CLASS ACTION LAWSUIT THAT COULD AFFECT YOUR LEGAL RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

TO: All non-African American graduates of institutions participating in the Federal Aviation Administration's ("FAA") Air Traffic-Collegiate Training Initiative ("CTI") Program who:

By February 10, 2014, (a) graduated from a CTI program at one of the 36 FAA partnered CTI Institutions between 2009–2013 and (b) passed the AT-SAT;

Applied to be an Air Traffic Control Specialist ("ATCS") trainee through the 2014 all sources vacancy announcement but failed the Biographical Questionnaire that was incorporated into the 2014 ATCS hiring process and was therefore not hired; and

Have never been offered employment as an FAA ATCS;

But excluding CTI graduates:

Who were not US citizens as of February 10, 2014;

Who by February 21, 2014, had reached 31 years of age (or 35 if they had 52 consecutive weeks of prior air traffic control experience);
Whose academic records as of February 21, 2014, explicitly stated that they were ineligible to receive a letter of recommendation from their CTI school; or
Whose AT-SAT scores or CTI eligibility had expired as of February 21, 2014.

THIS IS A COURT-ORDERED NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. THE PURPOSE OF THIS NOTICE IS TO INFORM YOU THAT:

Non-African American CTI graduates have sued the Department of Transportation alleging racial discrimination in the FAA's 2014 air traffic control specialist hiring process. Specifically, the Plaintiffs allege that the FAA (1) purged Class members' CTI qualifications, including their qualifying AT-SAT test results, to change the racial mix of persons advancing in employment screening and (2) designed and used an invalid Biographical Questionnaire, which sought to benefit African American applicants at the expense of non-African American applicants.

The Court has allowed this lawsuit to proceed as a class action on behalf of the Class as defined above to determine liability and declaratory and injunctive relief. Damages and individual equitable relief, such as back pay/front pay, will be determined on an individualized basis at a later stage if there is a finding of liability.

IF THIS NOTICE IS ADDRESSED TO YOU, YOU HAVE BEEN IDENTIFIED AS A LIKELY CLASS MEMBER.

You do not have to have participated in this lawsuit in any way up to this point to be a Class member. If you meet the terms of the Class definition, you are a Class member and your legal rights are affected. You now have to decide whether to remain in this lawsuit or to ask to be excluded from the lawsuit completely. **These options are explained in this notice. To remain in the lawsuit, you do not need to do anything. To ask to be excluded from the lawsuit, you must act within 30 days of when this notice was emailed or mailed to you.**

Unless a settlement is reached, lawyers for the Class must prove the claims against the FAA at a trial. If you decide to remain in the lawsuit, and if the Class succeeds in proving at trial that the FAA engaged in unlawful discrimination or the case settles, you will be notified about how money or benefits to individual class members will be determined. If you take no action, you will be legally bound by all of the Court orders and the judgments made by the judge or jury in this class action.

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BASIC INFORMATION

1. Why did I get this notice?

FAA records show that you are a 2014 ATCS applicant and may be a graduate of a CTI program who comes within the definition of the Class. This notice explains that the Court has allowed, or “certified,” a class action lawsuit that affects you. The Honorable Dabney L. Friedrich of the United States District Court for the District of Columbia is overseeing this class action. The lawsuit is known as *Andrew J. Brigida, et al. v. Peter P.M. Buttigieg, Secretary, U.S. Department of Transportation*, Case No. 16-cv-2227.

PLEASE DO NOT CALL OR WRITE THE COURT.

2. What is this lawsuit about?

This lawsuit is about whether the FAA discriminated against non-African American CTI graduates on the basis of race as part of the 2014 ATCS hiring process when it allegedly purged CTI graduates' CTI qualifications, including their qualifying AT-SAT test results, and instituted racially motivated hiring procedures, particularly an invalid Biographical Questionnaire, to benefit African American applicants at the expense of non-African American applicants.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class members." The CTI graduates in this lawsuit are called the Plaintiffs. The agency they sued (in this case, the Department of Transportation) is called the Defendant. One court resolves the certified issues for everyone in the class, except for those people who choose to exclude themselves from the class. Damages and individual equitable relief will be determined on an individualized basis at a later stage if there is a finding of liability. The class action approach avoids the need for numerous people to file similar individual lawsuits, and it allows the court system to resolve these claims in an efficient and economical way.

4. Why is this lawsuit a class action?

The Court decided that this lawsuit can be a class action because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal courts.

Specifically, the Court found that:

The Class is "numerous," meaning there is a sufficient number of members (approximately 1,000);

There are legal questions and facts that are common among the Class members;

The claims of Class Representatives Andrew Brigida and Matthew Douglas-Cook are typical of the claims of the rest of the Class;

The Class Representatives and the lawyers representing the Class will fairly and adequately represent the interests of the Class; and

The Court will be able to issue a declaratory judgment and injunctive relief that would benefit the entire Class.

THE CLAIMS IN THIS LAWSUIT

5. What does this lawsuit complain about?

In this lawsuit, Plaintiffs say that the FAA discriminated against them on the basis of race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000eet seq. Plaintiffs say that

the FAA engaged in illegal disparate treatment discrimination by purging Class members' CTI qualifications, including AT-SAT test results, as well as designing and implementing a racially biased hiring process, particularly the Biographical Questionnaire, ultimately refusing to fairly consider Class members for ATCS employment with the FAA, in an attempt to benefit African American applicants at the expense of non-African American applicants.

The FAA denies any wrongdoing and asserts, among other things, that it modified its prior hiring process and adopted a biographical questionnaire for legitimate, nondiscriminatory reasons.

6. Has the Court already decided this lawsuit?

The Court has not decided in favor of Plaintiffs or the Department of Transportation. By certifying the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case. The determination of who wins or loses is made later during the trial phases of the case.

7. What is the lawsuit asking for?

First, the Plaintiffs seek declaratory and injunctive relief, in the form of a declaration from the Court that the FAA's actions in purging Class members' CTI qualifications, including AT- SAT test results, and instituting the racially biased hiring process, particularly the Biographical Questionnaire, constituted illegal racial discrimination and that back pay/front pay is available as a remedy to eligible Class members. Second, Plaintiffs seek an injunction prohibiting the FAA from engaging in similarly discriminatory behavior in the future. Third, the Plaintiffs also seek additional equitable relief under Title VII in the form of: (1) hiring preferences for any Class member seeking employment with the FAA, even outside of an air traffic controller position; (2) discrimination training for FAA employees who impact or design hiring, such as those in human resources or civil rights departments; and (3) other injunctive relief intended to prevent the FAA from implementing discriminatory hiring practices in the future.

The case has been bifurcated, which means it will proceed in at least two stages. First, in stage one, a jury will determine whether the FAA engaged in illegal discrimination. If the FAA engaged in illegal discrimination, then the Court will issue a declaratory judgment and will determine what injunctive relief, such as hiring preferences and other injunctive relief, should be available to the Class.

After completion of stage one, if there is a finding of liability, the Court will determine what processes to use for a second stage regarding individual equitable and monetary relief. These processes may include submitting claims for back pay/front pay and a hiring preference and proceeding before an additional jury to resolve claims for compensatory damages (such as for emotional distress). ("Monetary relief" refers both to back pay/front pay and to compensatory damages. Both types of monetary relief are discussed in more detail under Question 14.)

8. Is there any money available now?

No money or benefits are available now because it has not yet been decided whether the FAA did anything wrong, and the two sides have not settled the case.

9. How will the Court decide who wins?

As long as the case is not resolved by a settlement, Class Counsel will have to prove the Plaintiffs' claims at trial. The trial date is not yet set. During the trial, a jury will hear all of the evidence to help them decide who wins.

If Class Counsel prove Plaintiffs' claims at trial, then additional steps, such as claims submissions or a jury trial on claims of individualized damages will take place in the next phase of the case, but the appropriate relief would likely be resolved individually, not for the Class as a whole.

WHO IS IN THE CLASS

10. Am I part of this Class?

If this Notice is addressed to you, government records indicate you are likely part of the Class. If you fit within the class definition below, you will *automatically be included* as part of the Class unless you ask to be excluded. You do not have to have participated in this lawsuit in any way up to this point in order to be a Class member. The Court's class definition includes all non- African American graduates of institutions participating in the FAA's CTI Program who:

By February 10, 2014, (a) graduated from a CTI program at one of the 36 FAA partnered CTI Institutions between 2009–13 and (b) passed the AT-SAT;

Applied to be an Air Traffic Control Specialist ("ATCS") trainee through the 2014 all sources vacancy announcement but failed the Biographical Questionnaire that was incorporated into the 2014 ATCS hiring process and was therefore not hired; and

Have never been offered employment as an FAA ATCS;

But excludes CTI graduates:

Who were not US citizens as of February 10, 2014;

Who by February 21, 2014, had reached 31 years of age (or 35 if they had 52 consecutive weeks of prior air traffic control experience);

Whose academic records as of February 21, 2014, explicitly stated that they were ineligible to receive a letter of recommendation from their CTI school; or

Whose AT-SAT scores or CTI eligibility had expired as of February 21, 2014.

11. Who are the Class Representatives?

The Class Representatives are Andrew J. Brigida and Matthew L. Douglas-Cook, CTI graduates with passing AT-SAT scores who allege that their CTI qualifications, including AT- SAT test results, were purged and who "failed" the 2014 Biographical Questionnaire, resulting in their applications to become air traffic controllers being denied. The Court decided that these two individuals will fairly and adequately represent the interests of the Class.

YOUR RIGHTS AND OPTIONS

12. What happens if I do nothing at all?

You do not have to do anything now if you want to remain a Class member, have your liability and injunctive claims resolved as part of the Class, and keep the possibility of getting money or benefits from this lawsuit in later proceedings. You do not have to have participated in this lawsuit in any way up to this point to be a Class member. If you meet the terms of the Class definition, you are a Class member. By doing nothing you are staying in the Class and your discrimination claim will be resolved. If you stay in the Class and the parties reach an agreement to settle the case or Plaintiffs prove their claims at trial, then you will be notified about how money or benefits to individual Class members will be determined (and you may again be given an opportunity to be excluded from any settlement or waive certain types of damages to simplify the individual relief stage if you so choose).

If you do nothing, you will not be able to make a separate legal claim of discrimination against the FAA outside this class action about the same discrimination that is the subject of this lawsuit. In other words, by remaining a Class member you cannot make a legal claim of discrimination against the FAA on your own for racial discrimination in the hiring of air traffic controllers relating to the February 2014 all sources vacancy announcement. You will be legally bound by all of the orders the Court issues and the judgments the judge or jury make in this class action. However, remaining a Class member does not waive your right to pursue other discrimination claims against the FAA, including any claims you may have relating to hiring or promotion decisions made other than those complained of in this lawsuit.

13. Why would I ask to be excluded?

If you already have a race discrimination claim pending against the FAA that alleges racial discrimination in the ATCS hiring process during the same time period (relating to the February 2014 all sources vacancy announcement) that you wish to continue, you need to consult with your counsel about asking to be excluded from the Class.

If you exclude yourself from the Class—which is sometimes referred to as “opting out” of the Class—you will not get any money or benefits from this lawsuit even if the Plaintiffs or Class members obtain them after proving discrimination at trial or from any settlement that may be reached between Plaintiffs and the FAA. If you exclude yourself, you will not be legally bound by the judgments in this class action.

If you decide to exclude yourself and pursue your own claim, you will have to hire and arrange for payment of your own lawyer, or represent yourself, and you will have to prove your own claims. If you do exclude yourself from this lawsuit so you can pursue a claim against the FAA for the same discrimination that is the subject of this lawsuit, you should talk to your own lawyer immediately, because federal employees/applicants have strict deadlines for pursuing employment discrimination claims, including after excluding themselves from a class action.

14. How do I ask the Court to exclude me from the Class?

To be excluded from the class—to “opt out”—you must notify Plaintiffs’ and Defendant’s counsel no later than 30 days after this notice was sent, either by filling out and returning the opt-out form attached to this Notice, or by filling out and submitting the online form available on Plaintiffs’ counsel’s website at mslegal.org/brigida-v-faa-opt-out

15. How do I ensure I continue to receive notices about this case?

To assist the Court and the parties in maintaining accurate lists of Class members, you are requested to provide notice of any changes in your address to: CTI_Class@mslegal.org or using the contact information provided in the “Questions” section below.

If this Notice was forwarded to you by the United States Postal Service, or if it was otherwise sent to you at an address that is not current, you should immediately provide your correct address. If the attorneys do not have your correct address, you may not receive notice of important developments in this case.

CLASS COUNSEL

16. Do I have a lawyer in this case?

The Court decided that Zhonette M. Brown and William E. Trachman of the non-profit legal foundation Mountain States Legal Foundation, and Michael W. Pearson of the law firm Curry, Pearson & Wooten, PLC are qualified to represent you and all Class members and appointed them to be “Class Counsel.” Contact information for Class Counsel is as follows:

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William E. Trachman
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(303) 292-2021
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Michael W. Pearson
CURRY, PEARSON & WOOTEN, PLC
814 West Roosevelt
Phoenix, Arizona 85007

(602) 258-1000

mpearson@azlaw.com

17. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want your own lawyer, you will have to make your own arrangements for payment of that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

18. How will Class Counsel be paid?

If Class Counsel obtain relief for the Class, including changes in hiring policies, availability of back pay, or other relief, they may ask the Court to require the FAA to pay their fees and expenses. Any application for an award of legal fees or costs by Class Counsel is subject to review and approval by the Court and payment by the FAA; you will not have to pay these fees and expenses. If the Court grants Class Counsel's request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by the FAA pursuant to the Court's approval.

QUESTIONS

19. What if I have questions?

Class Counsel have established an email account specifically to receive communications from Class members. Any inquiries by Class members concerning this Notice or the class action should be directed to CTI_Class@mslegal.org, or by phone or in writing, to Zhonette M. Brown, who can be reached at (303) 292-2021 or at Mountain States Legal Foundation, 2596 South Lewis Way, Lakewood, Colorado, 80227.

PLEASE DO NOT CALL OR WRITE THE COURT.