

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1044**September Term, 2018**

FILED ON: NOVEMBER 13, 2018

IN RE: PUBLIC EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY AND HAWAII COALITION MALAMA
PONO,

PETITIONERS

On Petition for Writ of Mandamus

Before: GARLAND, *Chief Judge*, AND TATEL AND WILKINS, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the petition for a writ of mandamus and on the briefs of the parties. The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the petition for a writ of mandamus be dismissed for lack of jurisdiction under Article III of the Constitution because the petitioners do not have standing.

The National Parks Air Tour Management Act of 2000, 49 U.S.C. § 40128, provides that the Federal Aviation Administration (FAA) shall, in cooperation with the National Park Service, establish certain air tour management plans or, as an alternative, voluntary agreements regulating commercial air tours over certain national parks and tribal lands, *id.* § 40128(b). The petitioners, public interest organizations concerned with the operation of commercial air tours over certain parks, “seek a writ of mandamus to the FAA and its Administrator to complete [management plans for certain parks] in accordance with all statutory and regulatory requirements within 24 months of the date of the issuance of the writ, unless by that time voluntary agreements, compliant with all statutory and regulatory requirements, have been entered with all commercial air operators over those parks.”

Petitioners' Opening Br. 3.

“The ‘irreducible constitutional minimum’ of Article III standing requires,” *inter alia*, that a party’s alleged injury-in-fact is “likely to be redressed by a favorable decision.” *In re Idaho Conservation League*, 811 F.3d 502, 508 (D.C. Cir. 2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The petitioners lack standing in this case because the relief they seek would not redress the injury they allege. Under the Act, neither management plans nor voluntary agreements can be issued without the approval of both the FAA and the Park Service, *see* 49 U.S.C. § 40128(b)(1)(A) & (b)(2) (management plans), (b)(7) (voluntary agreements), a point the petitioners do not dispute, *see* Petitioners’ Reply Br. 16. Yet, the Park Service is not a party to this case. Accordingly, because relief depends upon the independent action of an entity not before the court, the petitioners have failed to demonstrate that a writ of mandamus issued by this court to the FAA would redress the petitioners’ alleged injury. *See Wilderness Soc’y v. Norton*, 434 F.3d 584, 591 (D.C. Cir. 2006).

The petitioners’ rebuttals are unavailing. First, the petitioners cite *Massachusetts v. EPA*, 549 U.S. 497 (2007), in which the Court explained that taking “steps to *slow or reduce*” a harm satisfies the redressability requirement. *Id.* at 525. But that rule has no bearing where the remedy sought would neither slow nor reduce harm because it cannot reach a necessary non-party. Second, the petitioners’ observation that the Act designates the FAA as the “lead agency” and the Park Service as a “cooperating agency” for purposes of complying with National Environmental Policy Act regulations, 49 U.S.C. § 40128(b)(4)(C), does not alter the statutory impediment to the relief sought: the FAA, even as lead agency, cannot issue management plans or voluntary agreements without the approval of the Park Service, its cooperating agency. *Id.* § 40128(b)(1)(A), (b)(2), (b)(7).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk