

United States Court of Appeals
for the Fifth Circuit



No. 21-90044

A True Copy
Certified order issued Sep 30, 2021

Jyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

DAMONIE EARL, INDIVIDUALLY AND *on behalf of* ALL OTHERS
SIMILARLY SITUATED; LINDA RUGG, INDIVIDUALLY AND *on behalf of*
of ALL OTHERS SIMILARLY SITUATED; ALESA BECK,
INDIVIDUALLY AND *on behalf of* ALL OTHERS SIMILARLY
SITUATED; TIMOTHY BLAKEY, JR.; STEPHANIE BLAKEY;
MARISA THOMPSON, INDIVIDUALLY AND *on behalf of* ALL OTHERS
SIMILARLY SITUATED; MUHAMMAD MUDDASIR KHAN; JOHN
ROGERS, INDIVIDUALLY AND *on behalf of* ALL OTHERS SIMILARLY
SITUATED; VALERIE MORTZ-ROGERS, INDIVIDUALLY AND *on*
behalf of ALL OTHERS SIMILARLY SITUATED; JAMES LAMORTE;
BRETT NOBLE, INDIVIDUALLY AND *on behalf of* ALL OTHERS
SIMILARLY SITUATED; RUBEN CASTRO, INDIVIDUALLY AND *on*
behalf of ALL OTHERS SIMILARLY SITUATED; FRITZ RINGLING,
INDIVIDUALLY AND *on behalf of* ALL OTHERS SIMILARLY
SITUATED; LITAUN LEWIS, INDIVIDUALLY AND *on behalf of* ALL
OTHERS SIMILARLY SITUATED; LANCE HOGUE, JR.,
INDIVIDUALLY AND *on behalf of* ALL OTHERS SIMILARLY SITUATED,

Plaintiffs—Respondents,

versus

THE BOEING COMPANY; SOUTHWEST AIRLINES COMPANY,

Defendants—Petitioners.

Motion for Leave to Appeal
under FED. R. CIV. P. 23(F)
USDC No. 4:19-CV-507

No. 21-90044

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the motion of Boeing Company for leave to appeal under FED. R. CIV. P. 23(f) is GRANTED.

IT IS FURTHER ORDERED that the motion of Southwest Airlines Company for leave to appeal under FED. R. CIV. P. 23(f) is GRANTED.

IT IS FURTHER ORDERED that the unopposed motion of the Respondents to place their response under seal is GRANTED IN PART. The response filed on September 27, 2021, shall be filed under seal. Respondents are ORDERED, however, to file a redacted response within 7 days of this order.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 30, 2021

TO: All Counsel and Parties Listed Below

Misc. No. 21-90044 Earl v. Boeing Company
USDC No. 4:19-CV-507

Enclosed is a copy of the court's order granting the motion(s) for leave to appeal. The case is transferred to the court's general docket. All future inquiries should refer to docket No. 21-40720.

Unless the district court has granted you leave to proceed on appeal in forma pauperis, the appellant(s) should immediately pay the court of appeals' \$505.00 docketing fee to the clerk of the district court, and notify this office of your payment within 14 days from the date of this letter. If you do not, we will dismiss the appeal, see **5TH CIR. R.** 42.3.

By copy of this letter, I am requesting the district court to send the electronic record on appeal immediately.

Counsel desiring to appear in this case must electronically file a "Form for Appearance of Counsel", naming each party you represent, within 14 days from the date of this letter. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, we will remove your name from the docket. Pro se parties do not need to file an appearance form.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

Mr. Yavar Bathaee
Ms. Elizabeth L. DeRieux
Mr. Gregory DuBoff
Mr. Brian J. Dunne
Mr. Jason K. Fagelman
Mr. Thomas Miles Farrell
Mr. Jonathan S. Franklin
Mr. Edward Maxwell Grauman
Mr. Benjamin L. Hatch
Mr. James Vincent Leito

Mr. Brian David Schmalzbach
Mr. Peter B. Siegal
Mr. Michael Alan Swartzendruber
Mr. Philip Tarpley
Mrs. Geraldine Wileen Young

Enclosure(s)

cc: Mr. David O'Toole

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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Suite 115
NEW ORLEANS, LA 70130

September 30, 2021

Mr. Jonathan S. Franklin
Norton Rose Fulbright US, L.L.P.
799 9th Street, N.W.
Suite 1000
Washington, DC 20001-4501

Mr. Brian David Schmalzbach
McGuireWoods, L.L.P.
800 E. Canal Street
Gateway Plaza
Richmond, VA 23219

No. 21-40720 Earl v. Boeing Company
USDC No. 4:19-CV-507

Dear Mr. Franklin and Mr. Schmalzbach,

We have docketed the appeals and ask you to use the case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See **FED. R. APP. P.** and **5TH CIR. R.** 27 for guidance. Documents not authorized by these rules will not be acknowledged or acted upon.

You must complete a transcript order form, which can be obtained from the court's website www.ca5.uscourts.gov. If you are required to electronically file, you must, file the form via the 5th Circuit's Electronic Document Filing System even if the form was filed with the district court, and make financial arrangements with the court reporter. See also **5TH CIR. R.** 30.1.2 and **5TH CIR. R.** 31.1 to determine if you have to file electronically. When completed, this meets your obligation to order the necessary portions of the court reporter's transcript, see **FED. R. APP. P.** 10(b). (If you are pro se and unable to afford payment, you must file a motion with the district court requesting transcript at government expense, and notify this court.) We will coordinate the transcript deadlines with the court reporter. The court reporter should contact you directly if an extension of time to

file the transcript is granted. Failure to complete the transcript order form and make financial arrangements with the court reporter within 15 days will result in dismissal of the appeal in accordance with the rules.

We will provide you information about the briefing schedule of this appeal at a later date. If a transcript is unnecessary, please complete the section on the transcript order form to indicate such and we will start the briefing schedule. **5TH CIR. R. 31.4** and the Internal Operating Procedures following rules 27 and 31 state that except in the most extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from this date, see **FED. R. APP. P. 12(b)** and **5TH CIR. R. 12.** This form is available on our website www.ca5.uscourts.gov. Failure to electronically file this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

ATTENTION ATTORNEYS: Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at <http://www.ca5.uscourts.gov/docs/default-source/forms/instructions-for-electronic-record-download-feature-of-cm>. Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

You must pay to the **district court clerk** the \$505.00 court of appeals filing and docketing fee and notify this office of your payment within 15 days from the date of this letter. Failure to pay the fee within 15 days will result in the dismissal of your appeal, see **5TH CIR. R. 42.3.**

ATTENTION: If you are filing Pro Se (without a lawyer) you can request to receive correspondence from the court and other parties by email and can also request to file pleadings through the court's electronic filing systems. Details explaining how you can request this are available on the Fifth Circuit website at <http://www.ca5.uscourts.gov/docs/default-source/forms/pro-se-filer-instructions>. This is not available for any pro se serving in confinement.

Special guidance regarding filing certain documents:

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By: Shawn D. Henderson, Deputy Clerk
504-310-7668

cc:

Mr. Yavar Bathaee
Ms. Elizabeth L. DeRieux
Mr. Gregory DuBoff
Mr. Brian J. Dunne
Mr. Jason K. Fagelman
Mr. Thomas Miles Farrell

Mr. Edward Maxwell Grauman
Mr. Benjamin L. Hatch
Mr. James Vincent Leito
Mr. Peter B. Siegal
Mr. Michael Alan Swartzendruber
Mr. Philip Tarpley
Mrs. Geraldine Wileen Young

P.S. to Counsel: It is the responsibility of the attorney for EACH appellant to complete the transcript order form and pay any outstanding docketing fee for EACH notice of appeal.

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case No. 21-40720

Damonie Earl, individually and on behalf of all others similarly situated; Linda Rugg, individually and on behalf of all others similarly situated; Alesa Beck, individually and on behalf of all others similarly situated; Timothy Blakey, Jr.; Stephanie Blakey; Marisa Thompson, individually and on behalf of all others similarly situated; Muhammad Muddasir Khan; John Rogers, individually and on behalf of all others similarly situated; Valerie Mortz-Rogers, individually and on behalf of all others similarly situated; James LaMorte; Brett Noble, individually and on behalf of all others similarly situated; Ruben Castro, individually and on behalf of all others similarly situated; Fritz Ringling, individually and on behalf of all others similarly situated; Litaun Lewis, individually and on behalf of all others similarly situated; Lance Hogue, Jr., individually and on behalf of all others similarly situated,

Plaintiffs - Appellees

v.

Boeing Company; Southwest Airlines Company,

Defendants - Appellants