

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 08 2009

UNITED STATES OF AMERICA; RAY
LAHOOD,* United States Secretary of
Transportation,

Plaintiffs - Appellees,

v.

CITY OF SANTA MONICA,

Defendant - Appellant.

No. 08-55869

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

D.C. No. 2:08-cv-02695-GW-E

MEMORANDUM **

On Appeal from the United States District Court for the
Central District of California
George H. Wu, District Judge, Presiding

* Ray LaHood is substituted for his predecessor, Mary E. Peters, as United States Secretary of Transportation. Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

CITY OF SANTA MONICA,

Petitioner,

v.

MICHAEL J. O'DONNELL,^{***} Director,
Airport Safety and Standards; FEDERAL
AVIATION ADMINISTRATION,

Respondents.

No. 08-72192

FAA No. FAA 16-02-08

Petition to Review a Decision of the
Federal Aviation Administration

Argued and Submitted November 19, 2008
Pasadena, California

Before: PREGERSON and RYMER, Circuit Judges, and KORMAN,^{****} District
Judge.

The City of Santa Monica challenges the FAA's interim cease-and-desist orders on two separate tracks: it appeals issuance of a preliminary injunction enforcing the FAA's interim orders, and it petitions for direct review of the FAA's interim orders. We affirm issuance of the preliminary injunction and dismiss the City's petition for direct review as moot.

^{***} Michael J. O'Donnell is substituted for his predecessor, Kelvin L. Solco, Director Airport Safety and Standards. Fed. R. App. P. 43(c)(2).

^{****} The Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, sitting by designation.

We may affirm on any ground supported by the record. For preliminary relief a movant must show: “[(1)] that he is likely to succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. ____, 129 S. Ct. 365, 374 (2008).

The FAA is likely to prevail on the merits given Santa Monica’s contractual obligation to make its airport (SMO) available for public use on fair and reasonable terms and without unjust discrimination against a particular aircraft. FAA Contract No. DTFA08-94-C-20857, at 7 (June 2, 1994); *see City and County of San Francisco v. FAA*, 942 F.2d 1391, 1397-98 (9th Cir. 1991). Santa Monica is not likely to prevail on its justification, or on its Tenth Amendment argument. This being so, irreparable injury is presumed. *See United States v. Nutri-Cology, Inc.*, 982 F.2d 394, 398 (9th Cir. 1992). And the balance of equities tips in favor of the FAA: a large disruption to air traffic is avoided and Santa Monica is required to preserve the status quo only while FAA proceedings conclude. Given the safety history of Category C and D aircraft at SMO, the FAA’s role in ensuring aviation safety, and the potential disturbance to air traffic around the Los Angeles area, the preliminary relief requested (and awarded) is in the public interest.

In light of this disposition, the petition for review is moot.

AFFIRMED (No. 08-55869); PETITION FOR REVIEW DISMISSED (No. 08-72192).