

AUG 22 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**KENNETH D. PASKAR; FRIENDS OF  
LAGUARDIA AIRPORT, INC.,**

Petitioners,

v.

**FEDERAL AVIATION  
ADMINISTRATION; MICHAEL P.  
HUERTA; RAY LAHOOD, Secretary,  
United States Department of  
Transportation,**

Respondents.

No. 13-71514

FAA-1 No. 13-1070

**MEMORANDUM\***

On Petition for Review of an Order of the  
Federal Aviation Administration

Submitted June 5, 2013\*\*  
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **GOULD** and **N.R. SMITH**, Circuit  
Judges.

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Petitioner Kenneth Paskar seeks to recover \$19,450 in fees accrued in connection with his Petition for Review under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. Because Paskar's challenge to the FAA's planned closure of various air traffic control towers was dismissed without a judgment on the merits or court-ordered consent decree, Paskar does not qualify as a "prevailing party" within the meaning of the EAJA. See Perez-Arellano v. Smith, 279 F.3d 791, 794 (9th Cir. 2002); see also Buckhannon Board & Care Home, Inc. v. W. Va. Dep't. of Health & Human Res., 532 U.S. 598, 610 (2001). Accordingly, his application for fees is

**DENIED.**