

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE SIERRA CLUB FOUNDATION;
PUBLIC CITIZEN; ENVIRONMENTAL
LAW FOUNDATION; BROTHERHOOD OF
TEAMSTERS AND AUTO TRUCK
DRIVERS LOCAL NO. 70,

Petitioners,

v.

DEPARTMENT OF TRANSPORTATION;
FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION; RAYMOND L.
LAHOOD,* Secretary of
Transportation; ROSE A.
MCMURRAY,** Acting
Administrator of the Federal
Motor Carrier Safety
Administration; UNITED STATES OF
AMERICA,

Respondents.

No. 07-73415

FMCSA No.
07-1355

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

**Rose A. McMurray, Acting Administrator, is substituted for her predecessor, John H. Hill, who was the Administrator of the Federal Motor Carrier Safety Administration. Fed. R. App. P. 43(c)(2).

OWNER-OPERATOR INDEPENDENT
DRIVERS ASSOCIATION, INC.,
Petitioner,

v.

FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION,
Respondent.

No. 07-73987

FMCSA No.
07-1355

ORDER

On Petition for Review of an Order of the
Federal Motor Carrier Safety Administration

Argued and Submitted
February 12, 2008—San Francisco, California

Filed April 20, 2009

Before: Dorothy W. Nelson, Andrew J. Kleinfeld and
Michael Daly Hawkins, Circuit Judges.

COUNSEL

Jonathan Weissglass, Altshuler Berzon LLP, San Francisco, California, for petitioners The Sierra Club Foundation, Public Citizen, Environmental Law Foundation, and Brotherhood of Teamsters and Auto Truck Drivers Local No. 70.

Paul D. Cullen, Sr., The Cullen Law Firm, Washington, D.C., for petitioner Owner-Operator Independent Drivers Association, Inc.

Irene M. Solet, United States Department of Justice, Civil Appellate Division, Washington, D.C., for the respondents.

ORDER

Petitioners Sierra Club, et al., and Owner-Operator Independent Drivers Association petition this court for review of the notice of intent by the Federal Motor Carrier Safety Administration (“FMCSA”) to proceed with a pilot program to authorize up to 100 Mexico-domiciled carriers to operate beyond the border zone. We dismiss because this petition is now moot.

While the petition was pending, Congress passed and the President signed into law the Omnibus Appropriations Act, 2009, Pub. L. 111-8, 123 Stat. 524. Section 136 of that legislation prohibits the use of funds appropriated under it “to establish, implement, continue, promote or in any way permit” a demonstration program like the one at issue in this case.

Pursuant to § 136, the FMCSA has terminated the existing demonstration program. Even if Congress does not impose the same limitation in future fiscal years, any new pilot program the FMCSA might initiate in the future would likely present different questions of statutory and regulatory requirements than the now terminated program and would likely not fall into the “yet evading review” category. Accordingly, the petition for review is moot.

DISMISSED.

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