

Ninth Circuit Holds Clean Air Act § 233 Preempts State Tort Claims Over Sea-Tac Aircraft Emissions

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On September 23, 2026, the Ninth Circuit held that Section 233 of the Clean Air Act expressly preempts state law claims brought by residents living beneath the takeoff and landing paths of Seattle-Tacoma International Airport (Sea-Tac).¹ Although the panel agreed that the district court had subject matter jurisdiction, it ultimately reversed the denial of defendants' motion to dismiss and remanded accordingly. The court ultimately held that plaintiffs' negligence, battery, trespass, public nuisance, and inverse-condemnation theories could not proceed because they sought to enforce state "standard[s] respecting emissions of any air pollutant from any aircraft or engine thereof."² The decision has significant implications for airlines, airport operators, and other federally regulated aviation defendants facing community pollution suits.

The Suit

The named plaintiffs (plaintiffs) live within a five-mile "Contamination Zone" around Sea-Tac.³ They sued Alaska Air Group, Inc., Delta Air Lines, Inc., and the Port of Seattle (collectively defendants) on behalf of proposed resident and homeowner classes comprising more than 300,000 people.⁴ Their complaint alleged that engine exhaust and metallic particles flaking from aircraft fuselages during low altitude operations contaminate not only the air and soil, but also residents' bodies.⁵ Citing University of Washington studies and comparative health data, plaintiffs alleged elevated hospitalization rates for respiratory conditions, premature births, shorter life expectancy, and higher rates of cancer and respiratory death. They also alleged diminished property values and maintained that these harms fall disproportionately on poorer and minority communities in King County.⁶ Accordingly, plaintiffs sought declaratory and injunctive relief, including remediation and medical monitoring, as well as damages for loss of use and enjoyment of property.⁷

Defendants removed the case from King County Superior Court and moved to dismiss for lack of jurisdiction and failure to state a claim, invoking exclusive review statutes, the Airline Deregulation Act, Section 233, and implied preemption.⁸ The district court denied the motion and certified its order for interlocutory appeal under 28 U.S.C. § 1292(b).⁹

The Court Rejects the Collateral-Attack Argument

Writing for the panel, Judge Paez first rejected Delta's argument that the complaint constituted an improper collateral attack on EPA and FAA orders reviewable only in the courts of appeals under 42 U.S.C. § 7607(b)(1) and 49 U.S.C. § 46110.¹⁰ The collateral attack doctrine bars district court claims that are "inescapably intertwined with a review of the procedures and merits" of a prior agency order.¹¹

According to the court, that doctrine did not apply here. Delta identified a web of EPA emission rules, an FAA Finding of No Significant Impact for the Greener Skies Over Seattle initiative, and authorization of Sea-Tac's third runway, but it could not point to a particular order whose merits the complaint necessarily challenged.¹² The complaint instead targeted a "broad course of variably regulated conduct," rather than one or two discrete agency actions.¹³ The possibility that a jury might eventually be asked to second guess specific agency actions was insufficient at the pleading stage, *id.* at 15–16, and the district court therefore properly exercised jurisdiction.

Ninth Circuit Holds Clean Air Act § 233 Preempts State Tort Claims Over Sea-Tac Aircraft Emissions

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This holding does not establish jurisdiction over every suit brought by airport neighbors. It does confirm, however, that pervasive federal regulation of aviation does not, by itself, deprive a district court of jurisdiction over claims against a regulated carrier or airport operator.

Section 233 Provides the Basis for Preemption

The panel found plaintiffs' claims were expressly preempted under Section 233 of the Clean Air Act. As a result, it did not reach the question of preemption under the Airline Deregulation Act or the defendants' field and conflict preemption theories.

Section 233 provides that “[n]o state or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.”¹⁴ The court construed the provision's key terms broadly. “Standard” encompasses common law duties as well as statutes and regulations.¹⁵ “Respecting” has a “broadening effect” and reaches matters relating to the subject of the clause.¹⁶ “Air pollutant” follows the Clean Air Act's definition and ordinary usage, encompassing substances emitted into or otherwise entering ambient air.¹⁷

Under that reading, the complaint was preempted on its face. Its central premise was that airlines emit pollutants during takeoff and landing and that the Port permits that activity.¹⁸ Recovery under negligence, battery, trespass, nuisance, or inverse-condemnation theories would therefore enforce Washington duties “respecting emissions.”¹⁹

Plaintiffs' alternative characterization of their claims as targeting only the failure to clean up pollutants after dispersal did not alter the analysis. A cleanup theory is still one “relating to,” or brought “in view of,” the original emission and therefore falls within the provision's reach.²⁰ Both engine exhaust and fuselage particulate matter fell “squarely” within the statutory definition of air pollutant.²¹

Navy Does Not Control In-Flight Emissions

The district court had relied on *California v. Navy*, 624 F.2d 885 (9th Cir. 1980), which held that state regulation of emissions from jet engine test cells is not preempted if compliance can be achieved without affecting engine design, structure, operation, or performance.²² The Ninth Circuit confined *Navy* to its facts. In that case, California sought to regulate emissions leaving 60-foot concrete smokestacks after detached engines were run in immobile test cells.²³ The emissions could be filtered at the stacks without modifying the engines.²⁴

Codoni, however, involved no intervening stationary source. The plaintiffs sought redress for pollution “generated directly by aircraft bodies and engines in flight, the core of Section 233's preemptive reach.”²⁵ In that context, Navy's “without affecting the engine” test did not apply.²⁶

The Identical Standard Exception Requires a Federal Violation

Section 233 permits states to enforce standards “identical to” federal aircraft-emission standards. 42 U.S.C. § 7573. As such, parallel state remedies for violations of federal requirements can survive similar preemption clauses.²⁷ The panel accepted that principle and noted defendants' concession at argument, but held that a plaintiff must at least allege a violation of federal law.²⁸

The *Codoni* complaint contained no such allegation. Counsel explained at argument that the omission was intentional because the plaintiffs lacked what they considered sufficient evidence. That choice was fatal.²⁹

What the Decision Means

Codoni does not hold that every claim involving an airport is jurisdictionally barred, and it leaves the Airline Deregulation Act and implied-preemption arguments unresolved. It does, however, establish that Section 233

Ninth Circuit Holds Clean Air Act § 233 Preempts State Tort Claims Over Sea-Tac Aircraft Emissions

(Continued)



reaches common law and state constitutional theories directed at aircraft exhaust and airframe particulate matter, including claims framed as seeking post-dispersal cleanup, unless the plaintiff pleads a parallel federal violation.

For defendants, the opinion provides a pleading-stage defense that does not depend on showing that the requested relief would require changes to aircraft design. For plaintiffs seeking to avoid preemption through enforcement of federal emission standards, the decision establishes a clear pleading requirement: the complaint must allege and support a violation of those standards.

The panel's reversal and remand returns the case to the Western District of Washington for proceedings consistent with the opinion. Whether other circuits adopt the Ninth Circuit's reading of "respecting emissions," will shape the decision's reach beyond Sea-Tac.

MG+M Law Clerk Olivia Paterson is a contributing author of this article.

¹*Codoni v. Port of Seattle*, No. 25-2830, slip op. at 5–6, 17 (9th Cir. Sept. 23, 2026).

²42 U.S.C. § 7573; *Codoni*, slip op. at 17–20, 24.

³*Id.* at 6.

⁴*Id.* at 6, 8.

⁵*Id.*

⁶*Id.* at 7–8.

⁷*Id.* at 8–9.

⁸*Id.* at 8–10.

⁹*Id.* at 10.

¹⁰*Codoni*, slip op. at 11–17.

¹¹*Americopters, LLC v. FAA*, 441 F.3d 726, 736 (9th Cir. 2006) (citation omitted).

¹²*Codoni*, slip op. at 13–15.

¹³*Id.* at 14.

¹⁴42 U.S.C. § 7573.

¹⁵*Codoni*, slip op. at 18 (citing *Nw., Inc. v. Ginsberg*, 572 U.S. 273, 281–83 (2014)).

¹⁶*Id.* (quoting *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018)).

¹⁷42 U.S.C. § 7602(g); *Codoni*, slip op. at 18–20.

¹⁸*Id.* at 19.

¹⁹*Id.*

Ninth Circuit Holds Clean Air Act § 233 Preempts State Tort Claims Over Sea-Tac Aircraft Emissions

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²⁰*Id.* at 19–20.

²¹*Id.* at 20.

²²*Codoni*, slip op. at 9–10, 20–21.

²³*Navy*, 624 F.2d at 886–89.

²⁴*Id.* at 888–89.

²⁵*Codoni*, slip op. at 22.

²⁶*Id.* at 21–22.

²⁷See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495–97 (1996) (plurality opinion); *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 447–52 (2005).

²⁸*Codoni*, slip op. at 22–23 (citing *Nacarino v. Kashi Co.*, 77 F.4th 1201, 1212 (9th Cir. 2023)).

²⁹*Id.* at 23.