

Court Rejects Challenge to U.S.-Flag Maritime Security Program Decision

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On July 17, 2018, the U.S. Court of Appeals for the District of Columbia Circuit dismissed the challenge by Matson Navigation Company, Inc. of U.S. Maritime Administration (MARAD) decisions approving vessel substitutions for APL Marine Services, Ltd.

The two U.S.-flag vessels substituted are engaged in the U.S.-Guam trade and are both enrolled in the U.S. Maritime Security Program (MSP). Under MSP, the U.S. Government provides monthly stipends to privately owned militarily useful U.S.-flag vessels to be available to the U.S. Government in the event of a national emergency. Among other things, the owner and operator of an MSP-enrolled vessel must meet one of several alternative U.S. citizen tests.

Matson, which also provides Guam service with U.S.-flag vessels not enrolled in MSP, has objected to competing against APL's MSP-enrolled vessels for that service. Matson's objections were first heard by MARAD pursuant to an administrative appeal decided on April 17, 2017. Matson then filed on June 2, 2017 a petition for review in the D.C. Court of Appeals.

Ordinarily, a challenge of agency action must be brought in a U.S. district court. However, a federal statute known as the "Hobbs Act" provides that challenges of government action arising under enumerated statutes must be brought exclusively before a U.S. court of appeals.

One of the enumerated statutes is section 50501 of title 46 of the U.S. Code, which is the current version of section 2 of the Shipping Act, 1916. Because of the origin of that statute, an entity which qualifies as a citizen under that section is often referred to as a "section 2 citizen."

In connection with the replacement of the two vessels, MARAD made an express section 2 finding in 2015 and an implicit one in a subsequent December 2016 decision. The court determined that the petition for review was filed too late under the Hobbs Act rules to consider whether the 2015 section 2 finding was sufficient to warrant Hobbs Act jurisdiction.

With respect to the December 2016 decision, the court determined that the MARAD decision was issued pursuant to the MSP vessel replacement statute and not under section 50501. In so doing, the court distinguished prior cases where the overlap of a section 2 determination with other determinations was sufficient for Hobbs Act jurisdiction.

The D.C. Court of Appeals determined in the Matson case that the MARAD decision challenged must “interpret” section 50501 for Hobbs Act jurisdiction—not merely reference it or have that section play a role in the challenged decision. Particularly because of the relative infrequency of cases challenging MARAD’s MSP actions, this recent case is a significant precedent for any future challenge of MARAD administrative actions where a U.S. citizenship determination may be involved.

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