No. 98-1417

In the Supreme Court of the United States

GRAND CANYON TRUST, ET AL., PETITIONERS

v.

FEDERAL AVIATION ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL AVIATION ADMINISTRATION IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Aviation Administration unlawfully withheld or unreasonably delayed action required by the Act of August 18, 1987, Pub. L. No. 100-91, § 3, 101 Stat. 676 (codified at 16 U.S.C. 1a-1 note), when it promulgated a regulation that does not fully achieve until 2008 the statutory objective of substantially restoring the natural quiet in the Grand Canyon National Park.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 154 F.3d 455.

JURISDICTION

The judgment of the court of appeals was entered on September 4, 1998. A petition for rehearing was denied on November 4, 1998 (Pet. App. 41a). On January 22, 1999, Chief Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including March 4, 1999, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves a Federal Aviation Administration (FAA) regulation implementing legislation to study and limit air traffic over the Grand Canyon National Park (Park). Act of Aug. 18, 1987 (Overflights Act or Act), Pub. L. No. 100-91, § 3, 101 Stat. 676 (codified at 16 U.S.C. 1a-1 note). 61 Fed. Reg. 69,302 (1996) (Final Rule or Rule); see also 62 Fed. Reg. 8862, 66,248 (1997) (delaying effective date for portions of the Rule). The Final Rule, which regulates air-tour operations over the Park in order to substantially restore natural quiet in the Park, includes a curfew, the designation of flight-free zones, a limit on the number of aircraft, and reporting requirements. The Rule is "part of an overall strategy to further reduce the impact of aircraft noise on the park environment and to assist the National Park Service [NPS] in achieving its statutory mandate * * * to provide for the substantial restoration of natural quiet and experience in Grand Canyon National Park." 61 Fed. Reg. at 69,302. The FAA is also engaged in finalizing new air-tour routes and further rulemaking to require the use of quiet aircraft technology for air tours over the Park.

The court of appeals denied petitions for review of the FAA's Final Rule filed by seven environmental organizations, which are now the petitioners before this Court, as well as by air-tour operators, local government entities, and an Indian Tribe whose reservation is adjacent to the Park. Petitioner environmental organizations seek this Court's review of the decision of the court of appeals that the FAA reasonably interpreted the Act and complied with applicable procedural requirements, and that judicial intervention to speed up the ongoing administrative process is not warranted.

1. In August 1987, Congress enacted the Overflights Act. Section 3(b)(1) of the Act required the Secretary of the Interior to submit, within 30 days, recommendations to the FAA "regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights." 101 Stat. 676 (codified at 16 U.S.C. 1a-1 note). The Act required that the recommendations provide for "substantial restoration of the natural quiet and experience of the park," as well as "protection of public health and safety from adverse effects associated with aircraft overflight." *Ibid.* The Act further required the FAA, within 90 days, and after notice and comment, to "issue a final plan for the management of air traffic in the air space above the Grand Canyon." § 3(b)(2), 101 Stat. 676 (codified at 16 U.S.C. 1a-1 note). The FAA was required to implement the Secretary's recommendations without change unless the FAA determined that implementing the recommendations "would adversely affect aviation safety." § 3(b)(2), 101 Stat. 677 (codified at 16 U.S.C. 1a-1 note). Finally, the Act required that, within two years after the effective date of the plan required under Section 3(b)(2), the Secretary submit a report to Congress assessing the success of the initial efforts to attain substantial restoration of natural quiet and to discuss possible revisions to those efforts. § 3(b)(3), 101 Stat. 677 (codified at 16 U.S.C. 1a-1 note).

2. Within months after passage of the Overflights Act, the Secretary transmitted to the FAA a series of recommendations designed to provide for substantial restoration of the natural quiet in the Park, as required by the Act. 61 Fed. Reg. at 69,302. After reviewing the recommendations, the FAA, on June 2, 1988, issued revised procedures for operation of aircraft in the airspace above the Park. Special Federal Aviation

Regulation (SFAR) No. 50-2, 53 Fed. Reg. 20,264 (1988). SFAR 50-2 established minimum altitudes, four flight-free zones, and special routes for air-tour operators. SFAR 50-2 was to expire within four years, but the FAA later extended its operation. Pet. App. 4a-5a & n.1.

On September 12, 1994, the Secretary submitted to Congress the report (NPS Report or Report) required by Section 3(b)(3) of the Overflights Act. Pet. App. 5a & n.3. The Report included a definition of "substantial restoration of the natural quiet"—"that 50% or more of the park achieve 'natural quiet' (i.e., no aircraft audible) for 75-100 percent of the day." *Id.* at 6a (quoting NPS Report 182). Using that definition, the Report reviewed the effectiveness of SFAR 50-2 and offered a new set of recommendations for further regulatory action. The Report suggested modification of the existing air-tour route structure, expansion of flight-free zones, phased implementation of quieter aircraft technology, and imposition of a curfew on air-tour overflights. *Id.* at 6a-7a (citing NPS Report 199-200).

In anticipation of the NPS Report, the FAA, in conjunction with the Secretary, issued an advance notice of proposed rulemaking seeking comment on potential measures for reduction of aircraft noise in the Park. 59 Fed. Reg. 12,740 (1994). In July 1996, the FAA issued a notice of proposed rulemaking (NPRM) for revisions to SFAR 50-2. 61 Fed. Reg. at 40,120. The FAA received more than 14,000 comments. *Id.* at 69,305.

3. On December 31, 1996, the FAA issued the Final Rule. The Rule expands the area covered by flight limitations; caps the number of aircraft at the number operating in 1996; requires tour operators to submit three reports every year on their flights; imposes a curfew under which air tours may not operate between

6 p.m. and 8 a.m. from May through September and between 5 p.m. and 9 a.m. from October through April; establishes new minimum altitudes for flights in various areas of the park; and creates new flight-free zones. 61 Fed. Reg. at 69,330-69,332; Pet. App. 8a-9a.

The FAA determined that adoption of the Rule would nearly achieve substantial restoration of the natural quiet in the Park by 1997. The FAA also proposed two additional actions—to establish new, and to modify existing, flight routes and to require tour operators to use quieter aircraft. The FAA estimated that, if the quiet technology rule was adopted, 57.4% of the Park would experience natural quiet for at least 75% of each day by the year 2008. Pet. App. 6a, 8a, 9a.[1]

Based on initial surveys of air-tour operators as well as operation specifications, the FAA had determined that the Rule would permit approximately 136 aircraft to operate within the area covered by flight restrictions. Pet. App. 11a. After the Final Rule was issued, however, the FAA obtained additional data showing that it had underestimated the number of eligible aircraft. *Ibid.* The FAA therefore reevaluated the environmental analyses completed for the Final Rule and published its results in a notice of clarification and request for comments. 62 Fed. Reg. at 58,898. The FAA determined that, although the new information changed the environmental analyses, the changes did not warrant modification of the Final Rule. *Ibid.* Although the greater number of eligible aircraft would

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[1] The FAA subsequently withdrew the notice of availability of proposed routes that it issued simultaneously with the Final Rule. 63 Fed. Reg. 67,545 (1998). The FAA, in consultation with NPS, is considering alternatives to that proposal, *ibid.*, and anticipates issuing a new notice of availability in the near future.

cause the Final Rule to be less effective in achieving the substantial restoration of natural quiet over time, the Final Rule still represented progress toward that end, and the FAA concluded that the quiet-technology rulemaking and the finalization of the air-tour routes, when completed, would result in attainment of the statutory goal. *Id.* at 58,900, 58,905.

4. a. Four petitions for review of the Final Rule were filed in the court of appeals. Pet. App. 1a-2a. Three of the petitions essentially argued that the Rule does "too much, too soon." *Id.* at 2a.[2] By contrast, in the fourth petition for review, seven environmental organizations,[3] which are now the petitioners before this Court, contended that the Final Rule does "too little, too late." *Ibid.* Petitioners argued that the Rule's definition of "substantial restoration of the natural quiet" is not sufficiently stringent and that "a

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[2] The petitioners included (1) a group of air-tour operators who argued that the Final Rule is more stringent than Congress intended; (2) the Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority, which focused on the possible elimination of a specific route as a result of the expansion of the flight-free zones; and (3) the Hualapai Tribe, which raised several procedural issues and also claimed that the FAA had violated its trust responsibility to the Tribe by failing to follow the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* The Tribe's reservation is adjacent to the Park, and it feared that the forced relocation of air-tour routes would cause more flights to pass over its land. See Pet. ii; Pet. App. 1a-2a, 12a, 25a, 28a.

[3] The organizations are the Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, the Friends of Grand Canyon, Grand Canyon River Guides, Inc., and the Northern Arizona Audubon Society. See Pet. ii.

rule that will not achieve substantial restoration until the year 2008 is inconsistent with the statutory goal." *Id.* at 30a.

b. The court of appeals denied the petitions for review. With regard to petitioners' contentions, the court upheld as reasonable the Final Rule's interpretation of "substantial restoration of the natural quiet" to mean that at least 50% of the Park experience natural quiet during at least 75% of the day, rejecting both the argument of industry organizations that the definition required too much quiet and petitioners' claim that it required too little. Pet. App. 16a-17a, 30a-34a. The court of appeals also rejected petitioners' claim that the Final Rule will achieve substantial restoration of the natural quiet "too late," and their related request that the court require the FAA to issue, within 60 days, regulations that will immediately achieve substantial restoration of the natural quiet in the Park; direct that the regulations establish flight-free zones ensuring that at least 50% of the Park is noise-free; and retain jurisdiction over the case to ensure compliance. *Id.* at 35a-39a.

In rejecting the latter claim and petitioners' request that the court order the FAA to take various measures, the court of appeals noted that several agency actions had been completed after the statutory deadlines for those actions had passed. Pet. App. 36a-37a. And the court stated that "[petitioners'] frustration with the agencies' slow and faltering pace is understandable." *Id.* at 36a. The court rejected, however, petitioners' argument that Congress intended that the natural quiet be fully restored in the Park within 120 days after passage of the Act. *Id.* at 37a. The court held that all Congress ordered within 120 days was the development of a plan, not full achievement of the statutory

objective. The fact that Congress required the Secretary of the Interior to submit a progress report two years after the Act's effective date showed that Congress understood the agencies' initial efforts might not be fully successful. *Ibid.* The court also rejected petitioners' contention that agency action had been unreasonably delayed, given the complexity of the issues and the fact that the FAA had proposed additional actions to achieve the statutory objective. Thus, the court concluded, it was neither contrary to the Act nor inherently unreasonable for the FAA to promulgate a rule that did not contemplate full achievement of the statutory objective until ten years after the rule was issued. *Id.* at 37a-39a.

ARGUMENT

This Court's review of the decision of the court of appeals is not warranted. The decision of the court of appeals is correct. It does not conflict with the decision of any other court of appeals or with any decision of this Court, and the issue presented arises under unique statutory provisions.

1. The court of appeals correctly rejected petitioners' contention (Pet. 12-19) that the FAA and the Department of the Interior have "unlawfully withheld or unreasonably delayed" (5 U.S.C. 706(1)) action required by the Overflights Act. As the court of appeals explained, although the Act "manifest[s] a congressional concern with expeditious agency action," it does not set a deadline for achievement of the goal of substantial restoration of the natural quiet in the Park. Pet. App. 36a-37a. And the agencies have not acted unreasonably because of the time it has taken to promulgate the rule that petitioners challenge here, or because the agencies' actions may not fully achieve the

Act's goal of substantial restoration of the natural quiet until the year 2008. See *id.* at 37a-39a.

a. Section 3 of the Act set deadlines for the promulgation of an initial plan to achieve that goal and submission of the NPS Report evaluating the success of the plan, see 101 Stat. 676 (codified at 16 U.S.C. 1a-1 note), but it set no deadline for achieving the goal itself. "Indeed, the provision for a report, which was to discuss whether the plan had succeeded and suggest revisions, makes clear Congress contemplated that the agencies' first plan might not succeed and might have to be revised—as the agencies have done in the regulatory plan at issue here." Pet. App. 37a.

The agencies were somewhat tardy in meeting the statutory deadlines, but petitioners never sought to compel the actions subject to the deadlines, and those actions were completed more than four years ago. There is accordingly no issue in this case concerning whether, or under what circumstances, a court might have compelled the FAA to take those specific actions. Instead, petitioners challenge FAA's new, more stringent approach, embodied in the Final Rule, which the FAA promulgated in response to the NPS Report. The Overflights Act did not expressly require the FAA to issue that new rule, and certainly did not require it to do so by any fixed date.

b. Although the issue is now essentially moot, we note that the FAA did not take unreasonably long to promulgate the Final Rule. Petitioners erroneously contend (Pet. 14) that the FAA "procrastinated for more than a decade in passing regulations designed to fulfill [the Act's] mandate." On the contrary, the FAA promulgated SFAR 50-2 in June 1988, less than a year after Congress passed the Overflights Act. See 53 Fed. Reg. at 20,264. As the court of appeals explained, that

regulation "went part of the way toward restoration." Pet. App. 37a. "As Congress directed, the government then evaluated progress under that regulation" (*ibid.*), and that evaluation revealed that aircraft noise would be greater than desired despite SFAR 50-2. In response, the FAA proposed and promulgated the Final Rule, and it proposed two additional actions that will provide for further aircraft noise reduction by establishing new aircraft routes and requiring the introduction of quiet aircraft technology.

Nothing in that course of action was unreasonable. Tellingly, petitioners never challenged SFAR 50-2 as failing to achieve the Act's goal, never sought to compel the NPS to issue its report evaluating the success of that regulation, and never sought to compel the FAA to amend SFAR 50-2 in response to the NPS Report. Indeed, "this is the first time any party has challenged the agency's delay in court." Pet. App. 37a.

c. Finally, it was reasonable for the agencies to provide for final achievement of the substantial restoration of the natural quiet in ten years from the promulgation of the Final Rule. As the court of appeals explained, the issues involved are complex, and achieving the statutory goal will require a multitude of agency actions. Pet. App. 38a. Deciding upon new air-tour routes, for example, requires the FAA to take into account air safety concerns, as well as the interests of persons such as members of the Hualapai Tribe who live near the Park and may be affected if overflights are rerouted to areas outside its boundaries. *Ibid.* The process of establishing the flight-free zones must also take into account the adverse consequences that would ensue if they "do no more than shift the flights and their noise from the Park to the Hualapai Reservation." *Id.* at 35a. Moreover, the quiet aircraft technology rule-

making also requires a careful balancing of the desire for reduced aircraft noise with aircraft safety and other concerns.

While the additional actions are being completed, the Final Rule will provide a significant reduction in noise levels. Because of the curfew, there are no air-tour flights over the Park during evening, night-time, and early morning hours. Pet. App. 8a. During the day, as well, natural quiet has been restored in much of the Park. The FAA concluded that the Final Rule will substantially restore natural quiet in 41.7% of the Park in 1997, even after considering the FAA's revised estimate of the number of aircraft operating in the Park. *Id.* at 11a. The area of the Park in which natural quiet has been substantially restored is expected to decrease to 34.2% in 2008, if aircraft operations continue to increase as expected. However, the reduced effectiveness of the Final Rule over time will be offset by the benefits from the quiet aircraft technology regulations and the new air-tour route structure. *Ibid.*

Given the ongoing agency process, congressional oversight of that process, the complexity of the regulatory issues, and the need to examine the safety impacts of any regulation of aircraft while in the air, the court of appeals correctly rejected petitioners' claim of agency action unlawfully withheld or unreasonably delayed.

2. Petitioners quote (Pet. 12-13) the Tenth Circuit's decision in *Forest Guardians* v. *Babbitt*, 164 F.3d 1261 (1998), amended on denial of reh'g, No. 97-2370, 1999 WL 236274 (Apr. 22, 1999), for the proposition that, because 5 U.S.C. 706(1) uses the word "shall," "Congress has stated unequivocally that courts must compel agency action unlawfully withheld or unreasonably delayed." 164 F.3d at 1268-1269. *Forest Guardians*, however, involved a situation quite different from the

one here. In that case, the Secretary of the Interior listed a species of fish as endangered under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, but failed to meet the statutory deadline for designating critical habitat for the species because Congress had imposed a moratorium on such designations and then greatly limited the availability of appropriated funds to the Fish and Wildlife Service for determining which species should be listed and what their critical habitats should be. 164 F.3d at 1268. Despite those appropriations restrictions, a panel of the Tenth Circuit concluded that Section 706(1) required the district court to issue an order directing the Secretary to comply with what the panel deemed to be an abiding nondiscretionary statutory duty. 164 F.3d at 1270.

Here, in contrast, the court of appeals correctly concluded that the Overflights Act sets no express deadline for the substantial restoration of the natural quiet and that the timetable contemplated by the FAA is not unreasonable. Because the court found that the FAA did not violate the Overflights Act, it did not address the issue in *Forest Guardians*—whether Section 706(1) requires a court to issue an injunction compelling compliance when an agency *has* been found to have violated a nondiscretionary statutory duty. Indeed, in *Forest Guardians*, the court recognized that, when an Act of Congress contains no precise deadline but instead requires an agency to act within an expeditious, prompt, or reasonable time, Section 706 "leaves in the courts the discretion to decide whether agency delay is unreasonable." 164 F.3d at 1272. The court of appeals properly exercised that discretion in this case when it concluded that the FAA has not unreasonably delayed agency action here.

Petitioners also claim (Pet. 15) that the courts of appeals have not permitted delays in agency action of the length that the court of appeals allowed here. Of course, deciding a claim of unreasonable delay requires detailed consideration of the circumstances of the rule-making at issue, not just a comparison of the alleged delay with time periods that have been approved or disapproved in other cases. See *Telecommunications Research & Action Ctr.* v. *FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*) (listing factors to consider in deciding unreasonable delay claim). But petitioners' argument suffers from an even more fundamental flaw: it rests upon an inapt comparison between this case, in which petitioners' fundamental complaint is that an agency has taken action but that action allegedly does not fully achieve the statutory goal with sufficient speed, with cases in which the gravamen of the complaint is the failure of an agency even to issue a rule or take any other action. *E.g.*, *Washington Legal Found.* v. *Alexander*, 984 F.2d 483, 488 (D.C. Cir. 1993) (alleged unreasonable delay in issuing a new policy or regulation in final form); *Community Nutrition Inst.* v. *Young*, 773 F.2d 1356, 1361 (D.C. Cir. 1985) (alleged unreasonable delay in holding a hearing), cert. denied, 475 U.S. 1123 (1986); *MCI Telecomms. Corp.* v. *FCC*, 627 F.2d 322, 340 (D.C. Cir. 1980) (alleged delay in deciding whether to accept or reject tariff revis ions). Section 706(1) speaks only to the latter situation, by authorizing courts to compel "agency action"—generally meaning an agency rule, order, or license determination, see 5 U.S.C. 551(13)—that has been unlawfully withheld or unreasonably delayed. Section 706(1) does not speak to the content of a rule once it is issued.

Here, petitioners' claim was not that the agencies had failed to act, see Pet. 16 ("No one accused the [FAA] of 'doing nothing.' "), but that the Final Rule and the other actions that the FAA proposed will not require substantial restoration of the natural quiet in the Park as quickly as the Act allegedly demands, see *ibid.*; Pet. App. 35a. But, as we have said, taking administrative action is one thing, completely remedying the problem at which a statute is directed quite another.

None of the court of appeals cases that petitioners cite (Pet. 15) as inconsistent with the decision of the court of appeals involved the construction of a statute to determine whether an agency rule was unreasonable in specifying the time by which the statutory objective must be fully achieved. In any event, decisions construing statutes other than the Overflights Act could, at most, be minimally relevant to the question whether the court of appeals correctly construed that Act in this case. Thus, although petitioners' cases suggest that relief may be appropriate under Section 706(1) if an agency fails to promulgate any rule long after the deadline by which Congress directed it to act has passed, those cases do not establish any time period by which agencies must ensure that all the substantive goals of the statutes they enforce have been attained. Determining when a statutory objective must be accomplished requires consideration of the terms of the specific statute at issue, not Section 706(1). Here, the court of appeals correctly concluded that the FAA's timetable for achieving substantial restoration of the natural quiet in the Park, as required by the Overflights Act, was reasonable under that Act.

3. Finally, petitioners' contention (Pet. 19-20) that the legal question decided by the court of appeals is of national importance is unpersuasive. Petitioners first

argue that the case has special importance because it comes from the court of appeals for the District of Columbia Circuit. Petitioners contend (Pet. 19) that other courts, which look to the D.C. Circuit for guidance on questions of administrative law, will be led astray by the decision, which petitioners assert is an "unprecedented departure from [the] APA['s] mandate" that a court compel agency action unreasonably delayed (Pet. 16) and from past D.C. Circuit precedent (Pet. 13-14). As we have explained above, however, the court of appeals did not hold that it has discretion to decline to compel agency action unreasonably delayed; rather it held that the FAA and Department of the Interior have not delayed unreasonably. See pp. 11-12, *supra.* That holding did not depart from past precedent but applied the precedent that petitioners accuse the court of ignoring. Compare Pet. App. 36a n.21 (citing *TRAC*, 750 F.2d at 80) with Pet. 13-14 (citing same). Thus, there is no danger that other courts of appeals will be led astray by the decision.[4]

Petitioners finally argue (Pet. 19-20) that the case warrants this Court's review because it involves air-

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[4] The court of appeals' decision to "t[ake] the government at its word" (Pet. 12, 17, 19) that it will proceed expeditiously with the two proposed rulemakings is also fully consistent with precedent. See *Action on Smoking & Health* v. *Department of Labor*, 100 F.3d 991, 994-995 (D.C. Cir. 1996); *In re United Steelworkers of Am.*, 783 F.2d 1117, 1119-1120 (D.C. Cir. 1986) (*Steelworkers*); *Oil, Chem. & Atomic Workers Int'l Union* v. *Zegeer*, 768 F.2d 1480, 1488 (D.C. Cir. 1985) (*Atomic Workers*); *TRAC*, 750 F.2d at 80. The court of appeals invited petitioners to ask the court for an order compelling agency action if the FAA takes an unreasonably long time to complete those rulemakings. That approach, which avoids placing the court as overseer of day-to-day agency action, is also consistent with precedent. See *Steelworkers*, 783 F.2d at 1120; *Atomic Workers*, 768 F.2d at 1488.

craft noise in the Grand Canyon National Park, "one of our Nation's most treasured sites." But petitioners do not contend that any delay in fully achieving the goal of the Overflights Act poses a danger to the Grand Canyon itself, and they exaggerate in claiming that the experience of the Park is "jeopardized by the near-constant noise of thousands of aircraft" (Pet. 20).[5] In any event, the fact that the case involves the Grand Canyon fails to establish that the court of appeals "has decided an important *question of federal law* that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c) (emphasis added).

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[5] Petitioners' characterization of the effect of aircraft noise in the Park ignores several important aspects of the Final Rule. First, because of the curfew, there are no air-tour flights over the Park during evening, night-time, and early morning hours. Pet. App. 8a. During the day, natural quiet has been restored in much of the Park—for example, 41.7% in 1997. *Id.* at 11a. Although short of the Act's ultimate goal, that is a significant improvement over conditions in 1994, when only 34% of the Park experienced natural quiet. *Id.* at 6a. Moreover, the fact that an area of the Park does not yet meet the natural quiet standard hardly means that visitors in that area are likely to be disturbed by noise from aircraft. The natural quiet standard is very demanding: an aircraft is considered audible if it causes a three decibel increase in the ambient noise level, the smallest change perceptible to the human ear. *Ibid.* The fact that natural quiet has not been restored in an area means that the area is expected to experience audible aircraft noise for more than 25% of the daylight hours, not that such noise is likely to disturb visitors' experience of the Park. According to data summarized in the NPS Report, only about 5% of Park visitors reported being annoyed by aircraft noise, *id.* at 15a, and those data were collected before the reduction in noise effected by the Final Rule.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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