

SERVED: June 2, 1996

NTSB Order No. EA-4466

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 27th day of June, 1996

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DAVID R. HINSON,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
	Complainant,	)	
		)	Docket SE-14199
	v.	)	
		)	
JAMES B. COOK,		)	
		)	
	Respondent.	)	
		)	
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**ORDER DENYING RECONSIDERATION**

Respondent has petitioned for reconsideration of our order, NTSB Order No. EA-4445, served April 22, 1996. In that order, we affirmed the Administrator's action to revoke respondent's airman and medical certificates. Specifically, we affirmed the law judge's grant of the Administrator's motion for summary judgment upon his demonstration that respondent had violated 49 U.S.C. 44710(b)(2). We deny the petition.

In connection with a plea agreement reducing the charges against him to failure to file monetary transactions, respondent indicated that he had knowingly flown an aircraft with marijuana on board. In the prior proceedings before this Board, and now on petition, respondent urges that it was improper for the Administrator (and, by extension, this Board) to use oral statements he provided in connection with his plea agreement as evidence in this case. Respondent believes that Thomas v.

Immigration and Naturalization Service, 35 F.3d 1332 (1994), precluded use of his oral statements.

We disagree.<sup>1</sup> In Thomas, the United States Attorney promised that "the government" would not oppose relief from deportation in proceedings before the INS. INS staff attorneys, not United States Attorneys, represent the government in INS deportation proceedings. Accordingly, the court found that, for the promise to mean anything, it had to mean that the INS would not pursue deportation. The court further held that the government would be held to the literal terms of its agreements, and ordinarily must bear responsibility for lack of clarity.

These holdings offer no assistance to respondent. We specifically found (slip opinion at 4) that the express terms of the plea agreement did not preclude the Administrator from using information respondent had provided the United States Attorney. Respondent here offers no reason why our prior analysis is flawed.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

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<sup>1</sup> The Administrator correctly notes that, although we did not specifically cite Thomas in our prior decision, we did review and consider its holding.