SAFETY IN FLIGHT

WHEN CAN COMMERCIAL AIRLINE PILOTS REMOVE PASSENGERS WHO MAY BE A THREAT?

By Oliver Beiersdorf and Catherine E. Kiernan

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In May 2018, a woman was removed from a Spirit Airlines flight from Atlanta to Las Vegas because she allegedly ran past a gate attendant after being told she was too late to board, refused to leave the plane when asked by the flight crew, and screamed profanities at the flight crew.[1] Ultimately, all of the other passengers had to deplane before officers could escort the woman off of the plane. All of this occurred while the pilots were focusing on completing preflight checks and preparing the aircraft for takeoff to ensure a safe flight. This incident, like many others where passengers are removed from commercial flights, was recorded, posted on social media, and highlighted by various news organizations. The woman removed from the Spirit Airlines flight streamed the entire event via "Facebook Live," and the video has been viewed more than 4.5 million times on Facebook alone.

With heightened social awareness regarding the safety of commercial flight as well as evolving airline regulations, it is critical that a pilot in command have the authority and discretion to remove passengers who may be a threat to safety. An airplane in flight is a unique environment with special risks, and a pilot in command often must make quick decisions based solely on information relayed from other crew members. While the public may be able to watch a video of a situation on a plane that results in a passenger's removal multiple times and consider alternatives and outcomes in hindsight, pilots and flight crew have to react in real time to ensure the safety of all passengers in an enclosed environment while flying thousands of feet in the air.

Congress, by statute, explicitly gave safety the highest priority in air commerce,[2] and the Federal Aviation Act (FAA) includes a provision providing the pilot in command with broad authority to remove passengers that are or may be a threat to safety.[3] The Tokyo Convention provides pilots in command with similar discretion on international flights, although the limited case law interpreting the Tokyo Convention provides a less deferential standard.

This article discusses (1) the rights of air carriers to exclude or refuse to accept passengers on domestic and international flights under § 44902(b) of the FAA, (2) preemption of claims under § 1305(a)(1) of the FAA (commonly known as the Airline Deregulation Act), and (3) the rights of air carriers to exclude or refuse to accept passengers on international flights under the Tokyo Convention.

FAA: Rights of Air Carriers to Exclude or Refuse to Accept Passengers

Congress's purpose in enacting the FAA was "to promote safety in aviation and thereby protect the lives of persons who travel on board aircraft."[4] To help accomplish that goal, 49 U.S.C. § 44902(b) of the FAA, known as "permissive refusal," provides pilots with broad authority to remove passengers:

> (b) Permissive refusal.—Subject to regulations of the Under Secretary, an air carrier, intrastate air carrier, or foreign air carrier my refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.[5]

In other words, the pilot in command stands in the role of the air carrier and can decide whether to remove a passenger from a flight for safety reasons. This discretion is critical for a pilot in command, who is, according to the *Code of Federal Regulations*, "during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and the airplane."[6]

Implied preemption of state tort claims. State tort claims relating to a passenger's removal from an aircraft for safety reasons are preempted by § 44902(b). While the FAA does not contain an express preemption provision, § 44902 impliedly preempts state tort claims because it is a federal standard directly on point and constitutes pervasive federal regulatory control in that area. This was recently reaffirmed by the U.S. District Court for the Southern District of California in *Register v. United Airlines, Inc.*, in which the court dismissed the plaintiff's state tort causes of action, including false imprisonment, intentional infliction of emotional distress, negligence, and negligent infliction of emotional distress, allegedly arising from the plaintiff's removal from an airplane due to a confrontation with a flight attendant.[7] The court held that "[t]he FAA preempts all state law impinging upon the circumstances under which an air carrier may remove a passenger from a flight for safety reasons."[8]

"Arbitrary or capricious" standard. Given the deferential standard in § 44902(b), the majority of courts hold that the removal or refusal to transport a passenger cannot give rise to a claim for damages unless the carrier's decision was "arbitrary or capricious."[9] The U.S. Court of Appeals for the First Circuit in *Cerqueira v. American Airlines, Inc.* clarified that "[t]he arbitrariness

TIP

Under the FAA, a pilot's decision to remove a domestic airline passenger cannot give rise to a damages claim unless the decision was arbitrary or capricious.

or capriciousness standard here is not the same as reasonableness under a negligence standard."[10] Some courts, including the First and Eleventh Circuits, have gone a step further and have interpreted § 44902 as an "affirmative grant" of permission to the air carrier, thus creating a presumption that the pilots' decisions and actions were reasonable and placing the burden on the plaintiffs to show that § 44902 is inapplicable.[11]

To determine whether a pilot's decision to remove a passenger was arbitrary or capricious, courts consider the facts and circumstances known by the pilot at the time she formed her opinion.[12] This includes consideration of (1) the limited facts known by the pilot at the time, (2) the time constraints in making the decision, and (3) the general security climate surrounding the events.[13] Because the pilot often has to make rapid decisions to ensure safety of the aircraft, the pilot does not have an obligation to make a thorough inquiry into the information received or the sources of that information or to conduct an independent investigation.[14] This is true even if it is later determined that the crew exaggerated or made false statements to the pilot concerning the events leading up to the passenger's removal.[15]

In *Mercer v. Southwest Airlines Co.*, the Northern District of California clarified that a plaintiff cannot avoid the preemptive effect of § 44902 by alleging that the pilot's belief that the plaintiff was inimical to the safety of the flight was factually inaccurate.[16] The captain in *Mercer* ordered that the plaintiff be removed because he was believed to be a security threat based on representations made by the flight attendants. The plaintiff sued, alleging that § 44902(b) did not apply to his claims because the comment that he was a "security threat" was merely a pretext for racial discrimination.[17] The court disagreed, holding that

> [p]laintiff misses the point. Defendant has it right that whether or not the captain was *correct* in his belief that Plaintiff posed a security threat, the fact that the safety of the flight was in question at the time Defendant acted is what is relevant to this analysis.[18]

In *Xiaoyun "Lucy" Lu v. AirTran Airways, Inc.*, the Eleventh Circuit held that conclusory statements by a plaintiff that her behavior did not threaten the safety of the flight were insufficient to prove that a pilot's decision to remove the passenger was arbitrary or capricious.[19] In that case, the plaintiff was removed from her flight based on the flight attendants' representations that the plaintiff refused to comply with safety regulations and would not turn off her phone during takeoff. The plaintiff did not allege any "discriminatory animus for her removal from the flight," instead insisting that she was not a threat to safety and that the flight attendants arbitrarily removed her from the aircraft.[20] The court held that

> [s]uch conclusory statements and bare assertions that [the plaintiff's] behavior was not inimical to safety—despite her admitted failure to comply with safety regulations—do not plausibly support a claim that her removal from the flight was arbitrary or capricious.[21]

In support of its holding, the court reaffirmed that

> [t]here is no duty on the part of the captain to investigate recommendations by flight attendants for removal of a passenger, and the captain is entitled to take representations of flight attendants at face value.[22]

A plaintiff may, however, prove that a decision by an air carrier to remove or refuse a passenger was arbitrary or capricious if she can show that no responsible decision maker would credit the information provided.[23]

For example, in *Cordero v. Cia Mexicana de Aviacion, S.A.*, the Ninth Circuit reinstated the jury verdict in favor of the plaintiff, holding that there was ample evidence in the record from which the jury could conclude that the airline "acted unreasonably in excluding [the plaintiff] without even the most cursory inquiry into the complaint against him."[24] In that case, the plaintiff boarded a regularly scheduled nonstop flight from Los Angeles to Mexico City. In addition to a long delay on the ground, the pilot announced that they were going to make an unscheduled stop to pick up additional passengers along the way. At that point, a passenger near the plaintiff became loud and insulted the pilot, and the

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pilot warned the passenger that he would be ejected if he did not control himself. When the plaintiff tried to re-board the plane after the intermediary stop, he was refused entry: he was told that he insulted the captain and the crew. The plaintiff responded that they had mistaken him for the other passenger who previously insulted the pilot and flight crew. Nonetheless, the air carrier refused to reconsider its decision and reissued the plaintiff's ticket for the following day.

The *Cordero* court reversed the trial court and upheld the jury's verdict against the airline, holding that the jury was properly instructed on the test for determining whether an air carrier acted reasonably (i.e., a fact-specific test based on what the airline knew at the time it formed its opinion without consideration of other facts later disclosed by hindsight). The court held that there was ample evidence to conclude that the airline acted unreasonably in not making any inquiry into the complaint despite the plaintiff's assertion that he was being mistaken for another passenger. The court noted that, at trial, the plaintiff introduced the testimony of another passenger who confirmed that the plaintiff had not made any untoward remarks or gestures to the captain or flight crew.

The plain language of § 44902(b), as well as case law interpreting the scope of pilots' discretion, provides pilots with the critically important right to remove passengers whom they believe might be adverse to safety (even if their concerns turn out to be unfounded) while not precluding relief for passengers in extreme situations where air carriers take unreasonable actions based on information that could not be considered credible based on the circumstances.

Airport terminal claims. The preemptive effect of § 44902(b) is limited in that it does not preempt claims arising from situations that occur in the airport terminal that are unrelated to any decision made by the pilot in command during boarding. For example, in the recent case *Doe v. Delta Airlines*, the U.S. District Court for the Southern District of New York held that § 44902 did not preempt the plaintiff's state law tort claims arising from her alleged altercation with a gate agent and subsequent arrest for intoxication in the airport terminal.[25] The court held that the plaintiff's claims were not preempted because the altercation occurred in the terminal, the identities of the gate agent and person that reported the passenger to the police were unknown, and there was no indication that their actions were based on the pilot's decision to deny the plaintiff boarding.[26] The court held that, based on the available evidence, a jury could find that the plaintiff's altercation in the airport terminal was entirely disconnected from the boarding process and the air carrier's decision to deny boarding.

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Pwreemption of Claims under the Airline Deregulation Act

Preemption under § 1305(a)(1) of the FAA, commonly known as the Airline Deregulation Act (ADA), provides additional protection that helps to ensure air carriers have discretion to remove potentially dangerous passengers without fear of legal consequences.[27]

Before the ADA was enacted, air carriers' routes, rates, and services were regulated under the FAA of 1958 by the Civil Aeronautics Board.[28] Because the FAA contained a saving provision preserving preexisting statutory and common-law remedies, air carriers were also regulated by the states.[29] In 1978, Congress enacted the ADA, the purpose of which was to eliminate federal regulations of rates, routes, and services to allow those aspects of air transportation to be set by market forces.[30] To further that purpose, the ADA, although it did not repeal the saving provision of the FAA, included an express preemption provision to "ensure that the States would not undo federal deregulation with regulation of their own."[31] That express preemption provision provides that states are prohibited from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to [an air carrier's] price, route, or service."[32]

In *Morales v. Trans World Airlines, Inc.*, the U.S. Supreme Court held that the phrase *related to* in the ADA expresses a "broad preemptive purpose" and that the ADA preempted the use of state consumer protection laws to regulate airline advertising, concluding that "relat[es]" means "ha[s] a connection with, or reference to, airline rates, routes, or services."[33] The express preemption provision of the ADA has been interpreted to extend to claims arising out of an airline's refusal to allow a passenger to board because those

claims concern the denial or inadequate provision of the airline's "services."[34]

Preemption of state law claims related to a "service." Courts consider three factors in determining whether the ADA preempts state law claims.[35] First, the court must determine whether the activity in question implicates a service provided by the airline. Many courts, including the Fifth and Eleventh Circuits, have adopted the definition of service in the ADA specifically to include boarding procedures and baggage handling.[36] Second, the court must determine whether the claim affects the airline service "directly or tenuously, remotely, or peripherally."[37] Finally, if the claim implicates an airline service and affects the service directly, the court must determine whether the underlying allegedly tortious conduct was reasonably necessary to the provision of the service. Analyzing the "reasonableness" inquiry of the third prong, the Southern District of New York in Rombom v. United Air Lines, Inc. held that

> [i]f the tortious act did not occur during the service in question or the tortious act did not further the provision of a service in a reasonable manner, the state tort claim should continue.[38]

The court's analysis in *Rombom* demonstrates that the preemption analysis under the ADA is claim specific and can result in different treatment for multiple claims arising from the same flight. In *Rombom*, the plaintiff's tort claims centered around three distinct actions taken by the flight crew. She alleged that she was injured because (1) the flight crew acted in a "rude" and "unprofessional" manner when they told her to be quiet during the preflight safety briefing, (2) the captain decided to return to the gate, and (3) the flight crew arrested her out of spite. The court found that only the alleged spiteful arrest of the plaintiff was actionable.[39]

The court held that the flight crew's actions in asking the plaintiff to be quiet while they were giving safety instructions clearly implicated a service provided by the airplane (e.g., safety instructions) and was not outrageous or unreasonable even if they talked to the plaintiff in a rude manner. The court also held that the pilot's decision about whether to take off or return to the gate was "unquestionably" a service provided by the airline because "such a decision determines whether the passengers will get to their destination."[40] The decision to return to the gate was not outrageous or unreasonable because the plaintiff did not have any evidence that the pilot's decision was "motivated by any improper or malevolent scheme."[41] Rather, the evidence indicated that the pilot simply relied upon information received from the flight crew.

As to the plaintiff's arrest after landing, the court found that such an action only implicates a service "if it is the only way to remove a passenger who refuses to disembark."[42] As the airline asserted that police were summoned because the plaintiff refused to disembark, the court agreed that this action implicated a service provided by the airline. However, the court found that the second prong of the test for preemption was not met, and therefore the plaintiff's state tort claims could continue because

> where the essence of the claim is that the air carrier abused its authority to provide a given service, the air carrier is not entitled to the protection of [the ADA].[43]

The ADA does not shelter airlines from suits that do not allege violation of state-imposed obligation but instead only seek to recover for the airline's breach of its own, self-imposed undertakings.

The court reasoned that even if the plaintiff's claims directly implicated the service at issue, her claims would survive because, under the plaintiff's version of the facts (that she voluntarily left the plane), arresting the plaintiff was not necessary to promote safety as "she ceased to pose any danger after the first flight attendant asked for quiet and she departed the plane quietly."[44]

Similarly, the U.S. Court of Appeals for the Fourth Circuit in *Smith v. Comair, Inc.* held that although tort claims can be preempted under the ADA if they relate to a price, route, or service of an air carrier, claims that

> stem[ ] from outrageous conduct on the part of an airline toward a passenger will not be preempted under the ADA if the conduct too tenuously relates or is unnecessary to an airline's service.[45]

The court noted that if an airline held a passenger without a safety or security justification, a claim arising

from that action would not be preempted because it would not relate to any legitimate service provided by the airline.[46]

Contract-based claims not preempted. By its express terms, the ADA does not shelter airlines from suits that do not allege violation of state-imposed obligation but instead only seek to recover for the airline's breach of its own, self-imposed undertakings. For example, in *Chouest v. American Airlines, Inc.*, the court held that claims arising out of injuries sustained on a tour bus provided by the airline as part of a vacation package were not preempted by the ADA because the provision of ground transportation by an airline is not a service as defined in the ADA.[47]

The cases interpreting the ADA reinforce the protections provided to air carriers and ensure that state law cannot undermine federal regulations. Because the permissive refusal provision in § 44902(b) and the preemption clause of the ADA both can be interpreted to preempt claims arising from an air carrier's decision to exclude or refuse to accept a passenger on a domestic flight, defendants commonly move to dismiss under both theories.

While defendants have both statutes as potential sources of immunity for pilots' and air carriers' decisions to refuse or remove a passenger, courts conduct a fact-specific analysis under both § 44902(b) and the ADA. Thus, a plaintiff may still have legal recourse in the exceptional situation where an air carrier acted outrageously and unreasonably or committed a tortious act unrelated to the services it provides. Other than these rare circumstances, a pilot is protected in her ability to promptly make time-sensitive decisions to remove unruly or dangerous passengers without having to conduct an independent investigation. This allows the pilot to focus on the important job of assuring a safe flight for passengers and crew.

Tokyo Convention: Rights of Air Carriers on International Flights

The Convention on Offences and Certain Other Acts Committed on Board Aircraft, commonly referred to as the Tokyo Convention, limits the liability of the air carrier for intentional flights when a passenger's claims arise from actions taken by the pilot or flight crew to preserve order and safety on board.[48] Article 6 of the Tokyo Convention specifically authorizes the pilot in command of an international flight to "take reasonable measure including restraint" when he "has reasonable grounds to believe" that a passenger "committed, or is about to commit" a criminal offense or an act that jeopardizes the safety of the aircraft or "good discipline on board."[49] The Tokyo Convention further provides in Article 10 that,

> [f]or actions taken in accordance with this Convention, neither the aircraft commander, any member of the crew, any passenger, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken.[50]

U.S. case interpretation. To date, *Eid v. Alaska Airlines, Inc.* is the only U.S. court case interpreting the Tokyo Convention.[51] In that case, a group of nine plaintiffs alleged that they were forced to disembark an international flight based on a flight attendant's uncorroborated allegation that their conduct had caused her to "los[e] control of the first-class cabin."[52]

The *Eid* court declined to adopt the "arbitrary and capricious" standard for a pilot's decision to restrain or remove passengers. Instead, the court applied an objective negligence standard of reasonableness, which it stated was consistent with the drafting history and plain language of the Tokyo Convention requiring the pilot to have "reasonable grounds" to take action.[53] Applying that standard, the *Eid* court held that a jury could find that it was inappropriate for the pilot in command to immediately divert the plane to Reno, Nevada, based on the uncorroborated statement of the flight attendant without asking follow-up questions or looking through the cockpit window to view the cabin.[54] The court emphasized that a jury could conclude that a reasonable captain should have tried to find out "something" before undertaking an emergency landing.[55]

The dissent in *Eid* criticized the majority for failing to understand the deferential standard imposed by § 44902(b) and also contended that the adoption of an arbitrary or capricious standard is consistent with the objectives of the Tokyo Convention, which deems "individual freedoms an important but secondary goal" of the convention.[56]

On remand and after nine years of litigation, the *Eid* case resulted in a trial verdict in favor of the airline because the jury found that the pilots' actions were reasonable.

The dissent also noted that the majority misconstrued the holding by the Israeli court in the 2006 case *Zirky v. Air Canada*, which at the time was the only other published decision interpreting the Tokyo Convention's reasonableness standard in Article 6.[57] The dissent argued that the *Zirky* court's interpretation of Article 6 was in line with the plain language of the Tokyo Convention and established a deferential standard similar to the arbitrary and capricious standard applied to decisions by pilots in command under the FAA. In support, the dissent noted that the *Zirky* court held that the proper standard for reasonableness conferred "extensive and wide authority" upon the captain and emphasized that "facts are not to be examined by hindsight . . . but at the time of the actual event."[58]

The *Eid* court's interpretation is significantly different from the strong protections afforded under § 44902(b) and appears to require that pilots take the time to investigate the legitimacy of their crew's representations about events occurring in the cabin despite their primary duty to safely pilot the aircraft.

Interestingly, despite the less deferential standard, on remand and after nine years of litigation, the *Eid* case resulted in a trial verdict in favor of the airline because the jury found that the pilots' actions were reasonable.[59]

Proposed amendments to the Tokyo Convention. After *Eid*, on April 4, 2014, the International Civil Aviation Organization adopted the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft at Montreal (Montreal Protocol 2014).[60] In an attempt to clarify and unify courts' interpretation of the "reasonable grounds" standard in Article 6 and in light of the less deferential standard announced in *Eid*, the United Arab Emirates, the International Air Transport Association, the International Federation of Air Line Pilots' Associations, and the International Union of Aerospace Insurers submitted a working paper with a proposed amendment to Article 10 of the Tokyo Convention.[61]

The working paper discussed the *Eid* decision and the dangers associated with its imposition of an objective reasonableness standard requiring the pilot to make

> some sort of evaluative enquiry about the behaviour of the passengers in question to determine whether reasonable grounds exist to use the power conferred by the [Tokyo] Convention.[62]

The working paper emphasized that such an interpretation was problematic because

> protection from legal proceedings for the airline and its employees under Article 10 of the convention is critical if crews are to have the confidence to deal with any challenge to safety and security on board an aircraft.[63]

In support of this view, the working paper also included an index discussing how the reasonable grounds standard in Article 6 has been or likely would be interpreted by different jurisdictions around the world. The working paper noted that "[t]he divergence in the case law on this issue clearly demonstrates the difficulty that courts have had in applying this key provision of the Convention."[64]

The working paper urged that Article 10 be amended to add an additional paragraph providing that

> [t]he aircraft commander will be accorded a high degree of deference in any review of actions taken by him or her in accordance with this Convention and any actions taken shall be assessed in light of the facts and circumstances actually known to him or her at the time that those actions were taken.[65]

This standard would have ensured that interpretation of the Tokyo Convention was consistent with the deference provided to pilots on domestic flights under the FAA and that pilots and flight crew would know the limits of their discretion regardless of a flight's destination.

Unfortunately, the recommendations in the working paper regarding the definition of *reasonable grounds* in Article 6 were not adopted in the Montreal Protocol 2014. Because the standard for reasonable grounds is undefined, it remains to be seen whether other courts will adopt the *Eid* court's less deferential objective reasonableness in controversies arising under the Tokyo Convention.

Conclusion

Air travel in modern society can present significant safety and security concerns, and the pilot in command is required to make decisions swiftly based on information provided by the crew while at the same time continuing to safely plan the flight or pilot the aircraft. A pilot seeking to ensure a safe flight must be confident that she has the authority and discretion to remove a potentially dangerous passenger without fear that a court could second-guess her decision. Without that high level of discretion, § 44902 of the FAA, the ADA, and Articles 6 and 10 of the Tokyo Convention cannot have the critical, practical impact necessary to ensure that commercial air travel continues to be safe.

In the example of the May 2018 removal of the passenger from a Spirit Airlines flight, the pilot may have been presented with a

disruptive passenger who could threaten the safety of the aircraft and those on board. The discretion afforded to pilots under the FAA should allow them to remove potentially dangerous passengers with confidence and thus protect everyone on board. ■

Notes

1. Michael Bartiromo, *Disruptive Spirit Airlines Passenger Refuses to Leave, Forces Whole Flight to Deplane*, Fox News (May 11, 2018), www.foxnews.com/travel/2018/05/11/disruptive-spirit-airlines-passenger-refuses-to-leave-forces-whole-flight-to-deplane.html.
2. 49 U.S.C. § 40101(a)(1) (2000).
3. *Id.* § 44902.
4. *In re* Mex. City Aircrash of October 31, 1979, 708 F.2d 400 ,406 (9th Cir. 1983); *see also* Rauch v. United Instruments, Inc., 548 F.2d 452, 457 (3d Cir. 1976).
5. 49 U.S.C. § 44902(b).
6. 14 C.F.R. § 121.533(d) (2018).
7. 2017 WL 784288, at *2 (S.D. Cal. Mar. 1, 2017).
8. *Id.*
9. Williams v. Trans World Airlines, Inc., 509 F.2d 942, 948 (2d Cir. 1975); Cerqueira v. Am. Airlines, Inc., 520 F.3d 1, 14 (1st Cir. 2008).
10. *Cerqueira*, 520 F.3d at 14.
11. *Id.*; Xiaoyun "Lucy" Lu v. AirTran Airways, Inc., 631 F. App'x. 657, 661 (11th Cir. 2015).
12. Ruta v. Delta Airlines, 322 F. Supp. 2d 391, 397 (S.D.N.Y. 2004); *Williams*, 509 F.2d at 948.
13. *Cerqueira*, 520 F.3d at 14.
14. *Id.*
15. Al-Qudhai'een v. Am. W. Airlines, Inc., 267 F. Supp. 2d 841, 848 (S.D. Ohio 2003).
16. Mercer v. Sw. Airlines Co., 2014 WL 4681788, at * 5 (N.D. Cal. Sept. 19, 2014).
17. *Id.*
18. *Id.* (emphasis in original).
19. 631 F. App'x 657 (11th Cir. 2015).
20. *Id.* at 661.
21. *Id.* at 661–62.
22. *Id.* at 661.
23. *Id.*
24. Cordero v. Cia Mexicana de Aviacion, S.A., 681 F.2d 669, 672 (9th Cir. 1982).
25. 129 F. Supp. 3d 23 (S.D.N.Y. 2015).
26. *Id.*
27. *Id.*
28. Northwest, Inc. v. Ginsberg, 134 S. Ct. 1422 (2014).
29. *Id.*
30. *Northwest*, 134 S. Ct. at 1424 (citing Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992)).
31. *Morales*, 504 U.S. at 378.
32. 49 U.S.C. § 41713(b)(1) (1997); *see also Northwest*, 134 S. Ct. at 1429.
33. *Morales*, 504 U.S. at 384.
34. Williams v. Trans World Airlines, Inc., 509 F.2d 942, 948 (2d Cir. 1975).
35. Rombom v. United Airlines, Inc., 867 F. Supp. 214 (S.D.N.Y. 1994); *Williams*, 509 F.2d at 948; Chouest v. Am. Airlines, Inc., 839 F. Supp. 412, 415–16 (E.D. La. 1993).
36. Koutsouradis v. Delta Air Lines, Inc., 427 F.3d 1339, 1343 (11th Cir. 2005); Branche v. Airtran Airways, Inc., 342 F.3d 1248, 1257 (11th Cir. 2003); Hodges v. Delta Airlines, Inc., 44 F.3d 334, 335 (5th Cir. 1995).
37. *Rombom*, 867 F. Supp. at 222 (citing *Morales*, 504 U.S. at 389).
38. *Id.*
39. *Id.* at 223.
40. *Id.*
41. *Id.*
42. *Id.* at 224.
43. *Id.*
44. *Id.*
45. Smith v. Comair, Inc., 134 F.3d 254 (4th Cir. 1998).
46. *Id.* at 259.
47. Chouest v. Am. Airlines, Inc., 839 F. Supp. 412, 418 (E.D. La. 1993).
48. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219.
49. *Id.* art. 6.
50. *Id.* art. 10.
51. 621 F.3d 858 (9th Cir. 2010).
52. *Id.* at 869.
53. *Id.* at 866–67.
54. *Id.* at 869.
55. *Id.* at 869–70.
56. *Id.* at 885.
57. Civil File No. 1716-05 A (Haifa Magistrate Ct. 2006).
58. *Eid*, 621 F.3d at 882.
59. Ginena v. Alaska Airlines, Inc., 04-cv-1304-MMD-CWH (D. Nev. Mar. 4, 2013).
60. Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft at Montreal, Apr. 4, 2014.
61. Int'l Conference on Air Law, *Amendment to Article 10 of the Tokyo Convention 1963* (UAE, IATA, IFALPA, & IUAI, Working Paper, DCTC Doc. No. 15, 2014), www.icao.int/Meetings/AirLaw/Documents/DCTC_15_en.pdf.
62. *Id.* ¶ 2.6.
63. *Id.* ¶ 2.10.
64. *Id.* ¶ 2.8.
65. *Id.* ¶ 2.12.