

## Williams in Law360: Courts Weigh Airport Security Over First Amendment

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August 28, 2017 Thomas Williams

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A holding by the 3rd U.S. Circuit Court of Appeals that U.S. airport checkpoint screeners cannot be sued for allegedly retaliating against travelers exercising free speech diminishes passengers' rights in the name of national security, experts say, [Law360 reported](#). The story said the decision insulates the Transportation Security Administration from blowback and is ratcheting up tensions in U.S. air travel.

The Aug. 22 ruling marks the first time the 3rd Circuit determined that there are limits to how travelers express their free speech rights at U.S. airport checkpoints, leaving the traveling public with no real recourse in federal court if TSA officers seemingly trample on individuals' constitutional rights by saying a national security threat is involved, even if that threat might have been made up, *Law360* reported. ...

The 3rd Circuit concluded that because of the sensitivities surrounding airport security screening, a First Amendment claim for retaliatory prosecution lodged against TSA supervisor Charles Kieser by a traveler named Roger Vanderklok couldn't stand. Vanderklok claimed Kieser lied to police that Vanderklok was irate, unruly and had made a bomb threat at a checkpoint at Philadelphia International Airport in January 2013. Kieser allegedly lied to get Vanderklok arrested in retaliation for Vanderklok stating that he wanted to file a complaint against Kieser, who was actually the one who was agitated and aggressive during the incident, according to Vanderklok. ...

Haynes Boone Partner [Thomas J. Williams](#), who has represented clients in a variety of First Amendment matters, agreed that this case illustrated that courts remain "exceptionally deferential" to the considerations of airport and aviation security, even in the context of the First Amendment.

"The passenger alleged facts that, if true, would seem to lead a court to recognize a First Amendment retaliation cause of action if ever it were going to," Williams said. "But even in the face of these facts, the 3rd Circuit concluded that the 'special factors' present in the airport security context precluded a claim resting on free speech considerations." ...

Excerpted from *Law360*. To read the full article, click [here](#). (Subscription required)