



Coping with Fast-Developing Protests/Demonstrations: Ensuring that Your Permitting Process and On-Site Approach Reflect the Realities of the Social Media Era

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AGENDA

- Trump Travel Ban and Airport Protests
- First Amendment Principles Applicable to Airport Protests
- Airport Rules on First Amendment Conduct
- Denver Litigation
- Practical Implications

NUMBER ESTIMATES VARY

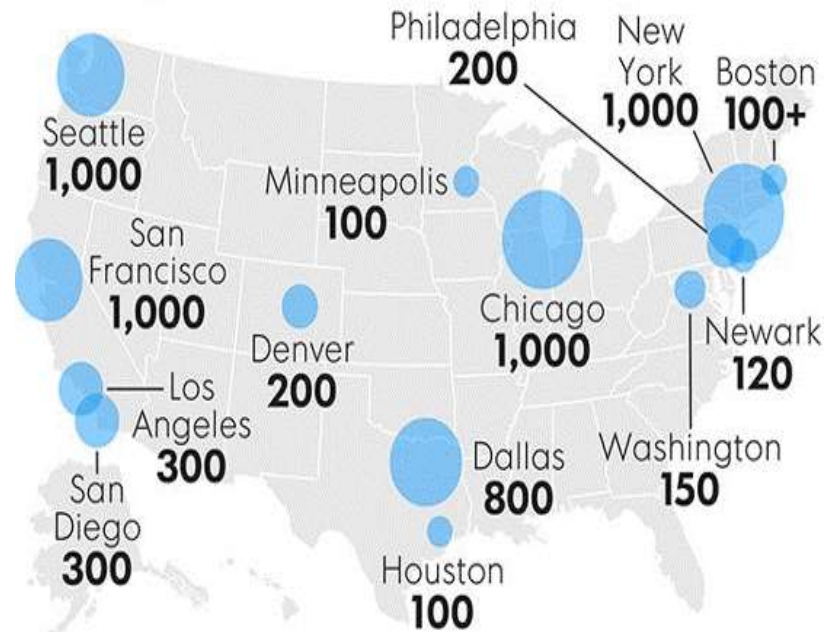


JFK – 2,000 protesters
Boston Logan – 1,000 protesters
Seattle – 3,000 protesters, 35 Arrests
Dulles – 100 Attorneys
Minneapolis-St. Paul – 1000+ protesters, Cold
Chicago O'Hare – 1,000+ protesters, No Arrests
Los Angeles – 5,000 protesters, No Arrests
Philadelphia – 5,000 protesters, No Arrests
Atlanta – 5,000-7,000 protesters, No Arrests



THOUSANDS PROTEST AT AIRPORTS

Protesters thronged airports across the U.S. Saturday against President Trump's executive order on immigration that prohibits travelers from seven primarily Muslim countries from entering the U.S. Estimated protesters:



SOURCE USA TODAY research of news reports
George Petras, USA TODAY



POLITICIANS RESPOND AND JOIN PROTESTS



LAX: Mayor, Airport CEO



PHL: Senator, Governor, Mayor



SFO: Lt. Gov



BOS: Senator, Attorney General
Mayor urged alternative location



IAD: Governor, House Members



JFK: House Members involved
in foreign travelers' release

ATTORNEYS SET UP MAKESHIFT OFFICES AND SOLICIT CLIENTS



IAD



SFO



ORD



DFW

MANY PROTESTERS CARRIED CREATIVE MESSAGES



PDX



MSP



PHL



PDX



LAX



SMF

SEA-TAC



Reported more than 3,000
protesters at one point
140 Port of Seattle Police
officers on scene
Peaceful protests were co-
opted by anti-police element
Pepper spray, civil disturbance
unit and bike squads deployed
Requested light rail diversion
34 arrests made



LAX



Saturday: 64 combined LAPD and Airport Police

Sunday 300 combined LAPD and Airport Police

26 International Flights Delayed

17 Domestic Flights Delayed

No Cancellations

Closed Upper and Lower Level Roadways

Counter-protestors arrived and were kept separate





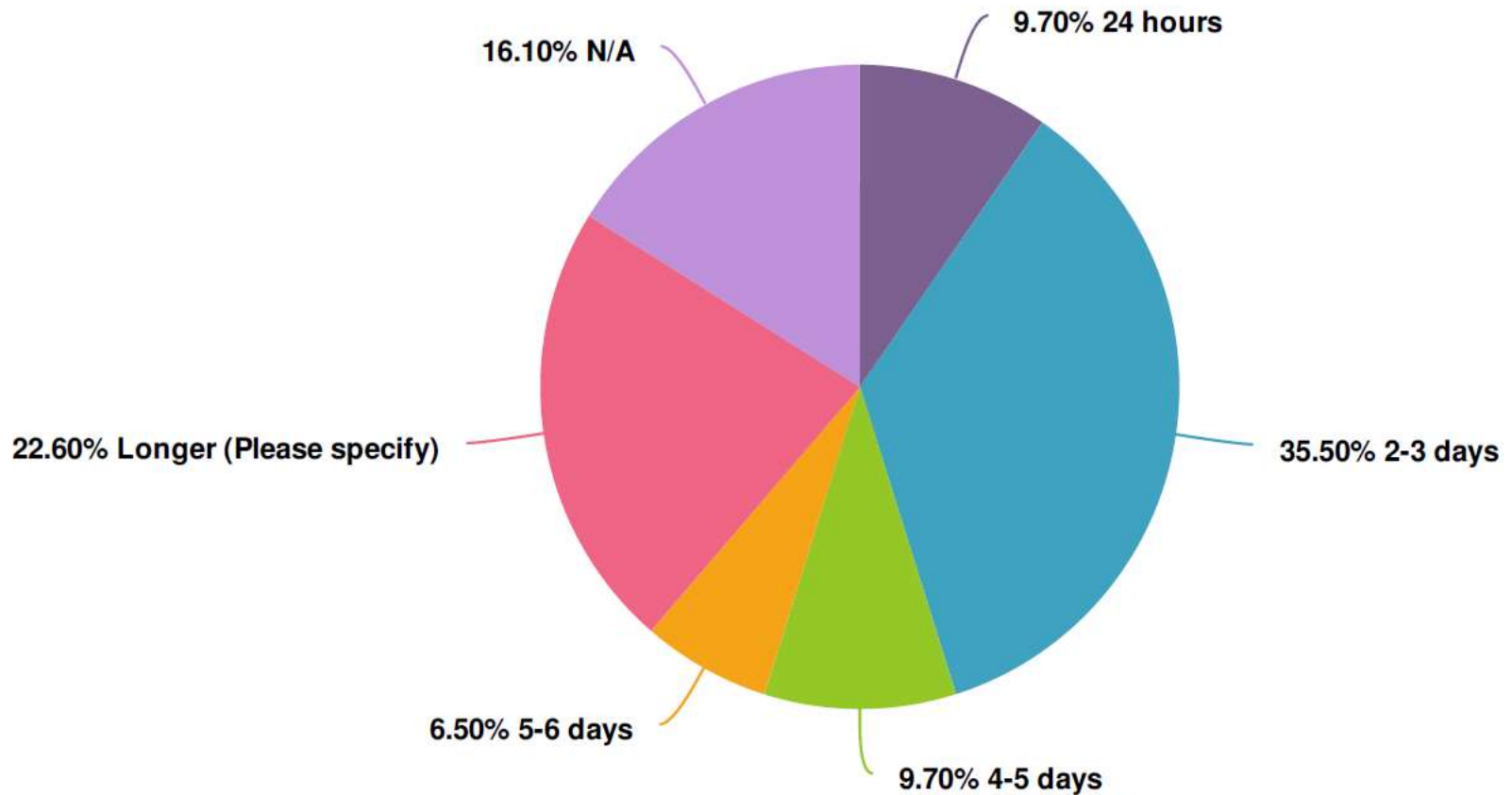


- ACI-NA Legal Affairs Steering Committee
Approved Amicus Brief Supporting DEN's Appeal
- Key Issue:
Airport Operators Are Entitled to Adopt Reasonable Speech Restrictions
Because Airports Are Non-Public Forums
- Sampled Small, Medium, Large Hub & Non-Hub
Airports
- Preliminary Results:
 - Airports Use Varying Approaches To Permitting



- Permitting Requirements:
 - 97% of Policies Require Advance Applications
- Advance Application Deadlines Vary:
 - Some Policies Do Not Specify
 - Specified Deadlines Range from 24 Hours to More than 6 Days
- Expediting Applications:
 - 71% Do Not Expressly Allow Expediting
 - 29% Have Expediting Process

Advance Permit Application Requirements





Operational & Safety Reasons for Advance Applications:

- Safety of passengers/other members of public
- Congestion/impeding ability of others to pass through terminal
- Complaints from public
- 70% Report Increased Concerns Since 9/11
- Need to notify parking, security or other vendors



Types of Operational & Safety Concerns:

- Safety of Passengers/Other Members of Public
- Congestion/Impeding Ability Move Through Terminal
- Interference with TSA Checkpoint
- Access Roadway Congestion
- Excessive Noise
- Terminal Curbside Congestion
- Complaints From Public



Steps Taken Based On Advanced Permit Requests:

- Increase security staffing / Brief security officers
- Alert airlines and airport tenants
- Advise TSA
- Prepare signage or information bulletins for passengers and patrons about potential disruptions
- Prepare public service announcements
- Deploy stanchions/temporary barriers to separate demonstrators from other airport users



- **Locations:**
 - 77% of Policies Have Airports Designate Where Demonstrators Are Located
- **Signage:**
 - 66% of Policies Do Not Regulate Sign Sizes
- **Group Size:**
 - Majority of Policies Do Not Limit Group Size
- **Operational Disruption:**
 - 43% Report Disruptions From Demonstrations



DEN'S EXPERIENCE: SATURDAY, JANUARY 28

-10:30am: CBP delivers general notification that they are expecting protests to develop at airports throughout the day.

-1pm: PIO received word from a local reporter that a protest was being planned at DEN via a Facebook group that already had over 1,000 members.

-Denver PD holds over day shift and shifts resources from downtown (~20mi away), including gang unit to prepare for disruptive elements such as black bloc.

-3pm: Immigration attorneys are present at CBP-FIS.

-3:30pm: DEN informs protestors of DEN's permit requirement on Facebook and receives an unofficial request from protest organizers to permit gathering in main terminal. DEN responds that permits take up to seven days to process.

-4:30pm: Protesters arrive in main arrivals location of the Jeppesen Terminal – aka the Great Hall. Estimated 400 individuals present at the protest's height.

-5:30pm: Police engage protest organizers, inform them of the permit requirement and begin negotiations for an alternate location. Protest leaders contend they are all waiting for a specific passenger named Omar.

-6:30pm: Police Commander accompanies protest organizer to the outdoor plaza adjacent to the Terminal – most of crowd follows outside.

-8pm: Protesters disburse after Omar arrives and addresses crowd assembled in plaza.

DEN'S EXPERIENCE: SATURDAY, JANUARY 28, CONT'D

28
TODAY

Public · Hosted by Heraa Hashmi and Nadeen Ibrahim

★ Interested
✓ Going

...

Saturday, January 28 at 5 PM - 7 PM
about 2 months ago

Denver International Airport
8500 Pena Blvd, Denver, Colorado 80249

Show Map

About
Discussion

408 Went · 1.3K Interested
Share this event with your friends

Details

Emergency Nonviolent, peaceful demonstration in response to the #MuslimBan

Today (1/28/17) at Denver International Airports main terminal at 5pm.

Bring signs with "I am _____, and I come in peace."


The forefront of this demonstration is the 1st amendment. Please dress in solid color white, red, or blue if possible.

We will provide 1st amendment signs word for word from the Constitution.

Send me a message for more information, if we don't have you with us, we can't do this.

This is legal, this is our right, this is our home.

#ProtectOurConstitution


Makia Jones
shared a link
January 28 ·


https://www.flydenver.com/.../id.../files/rules/50_leafleting.pdf

For those who need clarifications on the limits of this protest, please take a look at this document.

Like
Comment
Share

5


Write a comment...


Denver International Airport
January 28 ·

Hello everyone! We understand your desire to come to the airport to demonstrate tonight. However, it's important to understand that the airport's rules and regulations require a permit application prior to any public demonstrations. We cannot allow a gathering without this formal process. The organizers of this event should contact the airport directly if they want to initiate that process. You can send an email to media@flydenver.com and we will pass it to the permit office. Please understand that the airport is a 24-hour operation and the permit rules are in place to protect the safety and operations of the airport.

Like
Comment
Share

14
2 Comments


Denver International Airport
January 28 ·

The airport is aware that some people are interested in coming to our facility tonight to protest federal actions on immigration. Please know that the airport's rules and regulations requires a permit for any type of public demonstration. DEN respects the public's right to engage in political discourse, but we also have rules that protect the safety and operations of our facility.

DEN PLAZA



DEN PLAZA – JANUARY 28, 2017



JANUARY 29 EVENTS

- Protesters returned and assembled on the plaza in smaller numbers.
- Small number, including the two plaintiffs entered the Great Hall and wished to assemble in front of CBP-FIS.
- Denver PD made contact and advised of Airport Rule 50's requirement of a permit.
- No arrests made.



MCDONNELL AND VERLO SUE CITY AND COUNTY OF DENVER AND TWO INDIVIDUAL POLICE OFFICERS



Mr. Verlo's "welcoming sign"

Plaintiffs' Attorney

State Rep. Joe Salazar, plaintiffs' witness



DEN RULE 50 PROVISIONS AT ISSUE

- No leafleting, surveying, displaying signs, gathering signatures, soliciting funds, or engaging in other speech related activities for religious, charitable, or political purposes without a permit.
- Persons or organizations wishing to engage in these activities must apply for a permit at least seven days in advance.
 - Upon presentation of application, the CEO shall issue a permit if there is space.
 - CEO shall not exercise any discretion or judgment regarding the purpose or content of the proposed activity except as provided in the Rules.
- CEO may move expressive activity from one location to another or disperse such activity around the airport upon reasonable notice.
- No signs greater than one foot square
- No “picketing” in interior of terminal - i.e. no marching or holding signs.

MCDONNELL V. CITY & CTY. OF DENVER, NO. 17-CV-0332-WJM-MJW, 2017 WL 698802 (D. COLO. FEB. 22, 2017).

The Good Stuff

- DEN is neither a **traditional** nor **designated** public forum. “Plaintiffs claim that ‘[t]he Supreme Court has not definitively decided whether airport terminals ... are public forums.’ This is either an intentional misstatement or a difficult-to-understand misreading of the most relevant case (which Plaintiffs repeatedly cite), *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992).
 - Seven day advance permitting requirement is **reasonable**, generally.
- Rule and its application are **viewpoint neutral**.
 - Plaintiffs claimed that allowing pro-military signs and “Make America Great Again” hats without a permit constituted viewpoint discrimination. Court found this speech to be incidental to airport visitors’ primary purpose.
 - Plaintiffs’ star witness claimed to be part of an unpermitted event celebrating and escorting WWII vets through airport – was in fact a DEN, TSA and airline sponsored event that the court found to be government sponsored speech.
- Rule is neither **overbroad** nor **vague**.
- Nevertheless...

MCDONNELL V. CITY & CTY. OF DENVER, NO. 17-CV-0332-WJM-MJW, 2017 WL 698802 (D. COLO. FEB. 22, 2017).

The not-so-good stuff

- DEN's Rule 50 is unreasonable because...
 - It does not contain an exception to the seven day permitting process for exigent circumstances.
 - It grants the airport too much discretion in determining the location of expressive activities.
 - It constrains the size of signs to 12 inches square
 - It bans "picketing"
- Plaintiffs have standing despite not applying for a permit.
- Court found in plaintiffs' favor on remainder of PI elements – irreparable harm, public interest, and balance of the equities.

THE INJUNCTION AGAINST THE CITY

- Defendants must timely process a permit application...that is received less than 7 days but at least 24 hours prior to the commencement of the activity for which the permit is sought, provided that the applicant, in good faith, seeks a permit for the **purpose of communicating topical ideas reasonably relevant to the purposes and mission of the Airport, the immediate importance of which could not have been foreseen 7 days or more in advance of the commencement of the activity for which the permit is sought**, or when circumstances beyond the control of the applicant prevented timely filing of the application; however, circumstances beyond Defendants' control may excuse strict compliance with this requirement to the extent those circumstances demonstrably interfere with the expedited permitting process;
- So long as a permit applicant seeks to demonstrate in a location where the unticketed public is normally allowed to be, Defendants must make **all reasonable efforts to accommodate the applicant's preferred location**, whether inside or outside of the Jeppesen Terminal;
- Defendants may not enforce Denver Airport Regulation 50.09's prohibition against **"picketing"** (as that term is defined in Regulation 50.02–8) within the Jeppesen Terminal; and
- Defendants may not restrict the **size of a permit applicant's proposed signage** beyond that which may be reasonably required to prevent the impeding of the normal flow of travelers and visitors in and out of Jeppesen Terminal; and specifically, Defendants may not enforce Denver Airport Regulation 50.08–12's requirement that signs or placards be no larger than one foot by one foot.

DEN RULE 50 LITIGATION TIMELINE

- February 6: Plaintiffs file Complaint and Motion for Preliminary Injunction
- February 11: City files response
- February 13: Plaintiffs file Reply
- February 14: City files Surreply
- February 15: Judge holds eight hour hearing on motion for PI
- February 22: Judge issues order granting PI, in part
- February 23: 10CA stays PI, lift stay on March 14
- March 28: 10CA denies City's motion for expedited briefing
- May 8: City's opening brief due to 10CA
- September: Oral arguments tentatively scheduled



TRANSPORTATION

Are airports the new protest spaces of our globalized future?

Last weekend's demonstrations foreshadow airports' new place in civic life

BY ALISSA WALKER | @AWALKERINLA | JAN 16, 2017, 4:52PM EST

Those overlapping jurisdictions surprised demonstrators unprepared for the specific laws that govern the spaces they intended to occupy—laws which differ from airport to airport.

At Denver International Airport, protesters [first congregated in the arrivals hall](#), which obstructed the work of security officers. Airport officials then spoke directly with protesters to find a place to gather that wouldn't [interfere with operations](#). "When people showed up there was the opportunity to have that conversation with our police commander, who explained the rules and laws," says Heath Montgomery, spokesperson for DIA. "We worked with them to find common ground because it was unprecedented and something we hadn't seen before."

Denver just so happened to have the perfect solution: A [80,000 square-foot outdoor plaza](#), which was added in April 2016 when a brand-new commuter rail line threaded from downtown to the airport. The space has hosted an [ice rink](#), putt-putt golf course, and beer garden—all open to the public—which made it a natural fit to host the demonstration, says Montgomery. "The plaza was really designed to be a public gathering space for events. Everyone seemed to be really happy that there was a place for them."

Globally, this type of "airport urbanism" is actually becoming the norm as airport design worldwide [moves away from the fortress model](#) of the past. While continuing to focus on security for boarding areas, new airports are adding more permeable spaces that serve both passengers and the greater public. Munich's airport has a [similar programmed plaza](#) that [inspired Denver's](#).



Denver Police Dept.
@DenverPolice

Follow

Peaceful protest at DIA has ended. DPD kept folks safe and protected freedom of speech.

8:16 PM - 28 Jan 2017

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