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## David Dao on United Airlines

United CEO Oscar Munoz sighed as he reflected on recent events. The prior afternoon, airport staff and police at Chicago O'Hare Airport had forcibly removed passenger David Dao from United flight 3411 to Louisville, Kentucky. The upheaval began as part of a routine airport procedure: United staff offered vouchers to passengers willing to take a flight the next day in order to make room for four crew members who needed to get to Louisville to work on another flight. But when no one volunteered and all passengers had boarded, the airline selected four passengers to leave the aircraft, including Dao. In footage of the incident, a distressed Dao repeated: "I'm not getting off the plane." When subsequently dragged down the center aisle by airport police, Dao was bloodied and showed signs of a concussion. Alarmed by what they saw, other passengers recorded videos which soon took social media by storm—within 24 hours yielding well over a million mentions on Twitter.<sup>1</sup> Many readers saw the incident as a travesty of justice. With talk of a boycott and nearly 90,000 signatures supporting Muñoz's resignation,<sup>2</sup> it was certainly a public relations morass. In the short run, Munoz would need to approve text for a written statement and plan his remarks for *Good Morning, America*. More generally, the company might revisit applicable policies—or alternatively stand its ground.

Complicating Munoz's decision was the fact that United employees had attempted to follow the company policy at the time, and by all indications they had done so. He couldn't criticize them for following official company protocol. Yet, publicly defending the employees seemed unlikely to help United's cause. What could he say that would advance the discussion and address public outcry without causing more damage?

### Origins of Overselling and Overbooking

Historically, most tickets were transferable from one flight to another without charge. Thanks to that flexibility, a passenger might make a reservation and buy a ticket for one flight, but come to the airport later or not at all. Furthermore, in an era of paper tickets, airlines often had poor records of which passengers had purchased tickets (and were likely to travel) versus which had only made reservations (but had not paid). The result was wasted inventory: seats held in anticipation of passengers paying to travel, yet ultimately left empty when customers made other arrangements.

After deregulation of US aviation in 1978, most tickets became more restrictive, but some passengers continued to "no-show" for flights they had purchased. For example, a passenger might oversleep, get

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stuck in traffic or a long meeting, or decide not to take a planned trip. At premium prices, the most flexible tickets even allowed passengers to make a reservation for a flight, fail to travel (without telling the airline in advance about their change of plans), and later claim a full refund. Airlines did not ordinarily disclose the frequency of passenger no-shows, but some sources reported that as many as 8% of tickets went unused.<sup>3</sup> Other passengers were unable to travel due to “misconnects” – one flight arriving late, preventing the passenger from reaching an onward flight. Misconnects tended to be more common at large hubs (where most passengers connected from one flight to another), and more common when weather or other disruptions caused delays.

In response, airlines came to expect that some passengers would no-show, cancel, or misconnect. Airlines’ solution was to *oversell* most flights—selling more tickets than there were seats, predicting that a certain number of passengers would miss the flight or otherwise decline to travel. Via oversales, an airline could fill more seats net of passengers who no-showed or canceled, allowing increase in total revenue, decrease in fare per ticket, or both. In overselling a flight, an airline faced a risk there might be fewer no-shows and cancellations than expected, leaving the airline with more passengers than seats. To reduce the problem, airlines developed sophisticated software that considered a variety of factors including route, day of the week, time of day, ticket price, and historical experience.<sup>4</sup> Based on these factors and others, software predicted the likely number of no-shows and cancellations, allowing airlines to oversell most flights but usually have enough seats for all the passengers who reached the airport and wanted to travel. If arriving passengers ultimately exceeded the number of seats available, an airline’s oversale became an *overbook*, requiring the airline to decide which passengers to leave behind – and potentially prompting disputes with passengers.

Overselling was controversial from the start. Passengers were furious when they had paid in full for a ticket, yet were not permitted to travel as planned. It seemed particularly unfair for an airline to be able to force passengers to delay trips, or potentially cancel them completely, when the passengers had paid in advance and would incur high fees to make a change themselves. Overselling was in tension with widespread instincts about fairness and trust: passengers couldn’t be sure that they would get what they had paid for.

An early overbooking dispute in 1972 – among the first to attract substantial publicity – involved consumer advocate Ralph Nader. Planning travel from Washington, DC to Hartford, Connecticut for a speaking engagement, he booked a flight on Allegheny Airlines (which became US Airways and later merged with American). When he arrived at the airport with his confirmed ticket, he was told that the plane was already full, and that he could not travel as ticketed. He sued Allegheny for fraudulent misrepresentation because the airline had failed to notify him about its overbooking policies. The case eventually went to the Supreme Court, and in a sweeping 9-0 decision the Court ruled that Allegheny’s overbooking was, in fact, unlawful. In response to Nader’s case, as well as developing regulations, airlines were required to disclose their overbooking policies, establish and follow priority rules as to which passengers would be denied transport, and pay certain compensation to passengers who were denied transportation as a result of overbooking.

## Modern Rules of Overselling and Overbooking

As of 2017, airline overselling and overbooking practices were governed by a combination of law and regulation along with airlines’ contractual commitments to passengers.

In the United States, the Department of Transportation (DOT) set a basic regulatory framework. Airlines were permitted to oversell their flights, but had to disclose that practice at the time of booking, in tickets (including e-ticket confirmation emails), in official tariffs and similar statements, and also on

placards at airport service desks and gates. When an airline determined that a flight was not just oversold but actually overbooked, DOT regulations required the airline to seek volunteers willing to travel on a later flight in exchange for compensation from the airline. The exact amount of compensation was negotiated between passenger and airline, and was often, though not necessarily, a voucher or credit towards future travel. Passengers accommodated in this way were deemed *voluntary denied boarding* (VDB). If insufficient volunteers were available, an airline was permitted to select passengers for *involuntary denied boarding* (IDB), paying them a level of compensation specified by DOT regulation.<sup>5</sup> **Exhibit 1** presents excerpts of key requirements, and **Exhibit 2** presents their embodiment in the United Contract of Carriage.

DOT regulations also required airlines to establish *priority rules* for which passengers would be denied boarding.<sup>6</sup> Airlines typically exempted certain passengers (such as unaccompanied minors and passengers with disabilities) from IDB. Airline software ranked passengers to protect frequent fliers and those on full-fare tickets, though airlines typically did not disclose their exact priorities.

Despite the general DOT framework, disputes arose from time to time. For example, while DOT regulations required an airline to solicit volunteers, no DOT rule required airlines to offer any particular level of compensation. If an airline made a low offer, passengers were less likely to volunteer—increasing the likelihood of the airline resorting to IDB. This problem, at least, was somewhat offset by a preference at most airlines to reduce IDBs. For one, DOT required airlines to report how many passengers they IDB'ed; DOT published the resulting data, and most airlines preferred to reduce their standing in those tabulations. Furthermore, VDBs usually entailed payment in vouchers for future travel, and many vouchers went unused, whereas IDBs entailed payment by check, causing an airline to incur costs that were direct, immediate, and certain.

The level of IDB compensation prompted additional tension: Passengers sometimes complained that compensation levels were too low. In 1978, the DOT had set compensation at 100% to 200% of the passenger's one-way fare (depending on the length of delay), subject to a limit of \$200 or \$400, but those limits were gradually eroded by inflation. In 2007, the DOT doubled the caps to \$400 to \$800. In a 2010 rulemaking, the DOT cited increasing delays that could result from IDBs because more flights were full, as well as an apparent increase in IDB frequency. For those reasons, DOT increased IDB multipliers to 200% to 400% of the passenger's one-way fare (for delays of less than two hours, or more than two hours, respectively), and raised the maximums to \$650 and \$1300, respectively.<sup>7</sup> For passengers on frequent flier tickets, DOT rules required airlines to apply those same multipliers to the lowest fare paid by any other passenger on the affected flight.<sup>8</sup> The resulting rules also specified that the applicable maximums be adjusted periodically based on changes in the consumer price index, and as of 2017 the adjusted maximums were \$675 and \$1350, respectively.

Consumer advocates praised increased IDB compensation, but the denied boarding framework remained controversial, particularly in light of changes in air travel. First, airlines had repeatedly increased the fees to change or cancel flights: By 2017, consumers were often asked to pay \$200 or more to make a change, and some "basic" tickets banned changes, requiring a passenger to buy an entirely new ticket at full price. Yet when an airline wanted to IDB a passenger, it could pay much less. Moreover, some passengers complained that even 400% of a one-way fare might be small when a delay stretched overnight or even longer. Unbundled pricing further reduced IDB compensation: Historically, a passenger's fare covered baggage, seats, and a meal, each of which would be increased by the IDB multiplier; but when these benefits became separate add-ons, they were removed from IDB calculations. Meanwhile, aggressive yield management systems left flights increasingly full, so when a flight was overbooked, it was often difficult to find an alternative. Finally, shifting airline policies

further limited passenger options: Previously, a VDB or IDB passenger could fly any airline in order to finish a journey, but some airlines had left that system, narrowing passenger options.

## United Airlines

As of April 2017, United Airlines was the third-largest airline in the world based on revenue.<sup>9</sup> Based in Chicago, Illinois, United operated a fleet of 743 aircraft serving 235 destinations in the US and 138 international destinations in 60 countries.<sup>10</sup>

On the whole, United had struggled since the turn of the century. The events of September 11, 2001 had disrupted both airline operations and demand for air travel, reducing revenue to all airlines and forcing United and others into bankruptcy. During bankruptcy, United slashed salaries, restructured and cut its pension obligations, reduced facility maintenance, ended most free passenger meals, and let its aircraft fleet age without upgrades or replacements, all reducing both staff morale and passenger experience. In 2010, United merged with Houston-based Continental Airlines, a transaction which expanded their joint network but created a far larger carrier that struggled with information technology complexities, disparate fleets, and separate crew rosters that for years prevented ex-United staff from flying an ex-Continental planes and vice versa. A 2016 Bloomberg article summarized the situation in its title: “‘United Airlines’ quest to be less awful.”<sup>11</sup>

United’s problems came to a head in the sudden resignation in September 2015 of CEO Jeff Smisek. When investigating allegations that New Jersey Governor Chris Christie and his staff had intentionally created traffic jams to stymie political opponents, the US Department of Justice found other documents indicating that United had created a special twice-a-week flight from its hub in Newark, New Jersey to and from Columbia, South Carolina in response to requests from Port Authority Chairman David Samson, who sought a faster trip to his vacation home there. By all indications Samson demanded that flight as a condition of approving a new United maintenance hangar in Newark, and United reluctantly provided it—although the flight was predictably unprofitable. It seemed that Smisek knew about the quid-pro-quo, for he resigned when the matter was revealed, though he never faced criminal charges.

In Smisek’s place came Oscar Munoz, previously president of railroad goliath CSX Corp. Munoz came from humble roots: The oldest of nine children of Mexican immigrants, he was the first in his family to graduate from college. After studying business at University of Southern California and Pepperdine, he held positions at Pepsico, Coca Cola, and AT&T in marketing, finance, and customer service before shifting to CSX in 2003. Despite serving on United’s board since 2004, Munoz was nonetheless an outsider both to United and the airline industry. In an early press conference, he agreed that United’s merger with Continental had been “rough,” and he promised to improve the customer experience. At CSX, he had transported only cargo, but his role at United posed a new challenge and additional responsibility: “We have millions of human beings traveling on our equipment.” United’s flight attendant union praised his appointment in a press release, saying his “new direction” “recognizes the value of frontline workers and the full potential of our airline.”<sup>12</sup>

Whatever its challenges in this period, United’s financial results were refreshingly positive. For example, in 2015, United reported full-year net income of \$4.5 billion, excluding special items (which added another \$3.1 billion). 2016 was almost as favorable, with net income of \$2.3 billion. Analysts attributed these favorable results to a series of mergers which had reduced competition, as well as to a drop in fuel prices.

## United Express and Republic Airlines

While United's own aircraft and crews served the company's longest flights, including all intercontinental flights and major domestic flights, many shorter flights were flown under the brand name United Express. For these flights, eight regional affiliates owned or leased aircraft, hired and managed crew, and oversaw most aspects of operations. To customers, these flights usually seemed interchangeable with other United flights: planes usually bore United livery, flight attendants wore United uniforms, and tickets were sold and marketed by United. Nonetheless there were some important differences. For one, United paid its staff much higher salaries: United's union contracts assured that every starting pilot was paid at least \$72.22 per hour of flying time (and as much as \$391.49 per hour),<sup>13</sup> and every starting flight attendant at least \$26.68.<sup>14</sup> While each United Express negotiated separately with its staff, their salaries were far lower; Skywest, the largest United Express carrier, paid starting pilots as little as \$36.50 and flight attendants as little as \$17.86.<sup>15</sup> The fleets also varied: The smallest plane in United's mainline fleet was a 737-700 that could hold 118 passengers, but the largest United Express plane was a Bombardier CRJ-700 with capacity of 70 passengers, and some United Express planes held as few as 37. **Exhibit 3** lists the major United Express operators as well as their size and other operations. **Exhibit 4** presents United's summary of its relationships with United Express Carriers, while **Exhibit 5** quotes a portion of the United-Republic contract.

United set the routes and schedules for regional affiliates, as well as setting fares and handling marketing, leaving the affiliates to focus on flight operations. Multiple affiliates served certain routes, and some routes combined United Express service with mainline United aircraft and crew. For example, the 7am flight on a given route might be operated by ExpressJet while the 11am flight was operated by Trans States and the 2pm flight by mainline United.

Republic Airlines, operator of United flight 3411 on April 9, 2017, was a regional airline providing flights to American Airlines, Delta, and United, marketed as American Eagle, Delta Connection, and United Express, respectively. Employing more than 5,200 people and operating more than 170 aircraft (the largest fleet of Embraer 170 and 175 aircraft in the world), Republic served over 850 flights to more than 105 cities in the United States, Canada, Mexico, and the Caribbean.<sup>16</sup> Despite its size, Republic had struggled, entering bankruptcy in February 2016. Explaining its bankruptcy, Republic cited two main challenges. First, it reported operating out-of-favor aircraft: It had committed to lease many small aircraft, with as few as 50 seats, but major airlines had concluded that it was more economical to fly somewhat larger planes, making Republic's leases far less valuable than anticipated. Second, new federal requirements demanded that Republic pilots have at least 1,500 hours of experience, up from 250 previously, but Republic was struggling to find enough pilots with the required experience; experienced pilots could often find higher salaries elsewhere. At peak, Republic was forced to cancel as many as 4% of its flights, which prompted litigation from Delta claiming that Republic failed to operate the promised flight schedule.

United also relied on contractors to staff some check-in and gate agent positions. At major United airports, mainline flights were usually served by United staff. But United Express flights and flights from smaller airports were often served by United Express staff or by "ground handler" contractors.

## David Dao and Flight 3411

David Dao, then age 69, was an internal medicine physician in Louisville, Kentucky. He studied medicine in Vietnam and served in the Vietnamese military in 1974, though he never saw action during the war. He fled the country in 1975 when Saigon fell, ultimately reaching California where he finished

medical training before moving to Indiana in 1980. He married Teresa Dao, a pediatrician, and had five children.

On Sunday, April 9, 2017, David Dao's day began early, as he and Teresa ended their vacation in Los Angeles, California and sought to return to their home in Louisville, Kentucky. Their first flight, from Los Angeles to Chicago, was uneventful. They were then slated to fly to Louisville on United flight 3411, operated by Republic Airlines on behalf of United Express. That onward flight brought the events that soon became international news.

Before boarding began, staff at the gate informed passengers that the flight was oversold by one seat. United asked for volunteers but no one offered, and United involuntarily denied boarding to one passenger who was chosen for IDB in part because he did not have a seat assignment. United paid him a check as compensation and booked him on another United flight.

When passengers were called to board United flight 3411, Dao did so and took the seat listed on his boarding pass.

At the same time, an earlier United flight to Louisville had a maintenance problem. Booked on that flight were four crew members who were scheduled to operate an early United Express flight from Louisville to Newark the next morning. The crew needed to timely arrive in Louisville, then get the required overnight rest. Concerned about the impact of delaying the next morning's flight, not to mention subsequent flights by that crew and aircraft, United booked the four crew members onto flight 3411.

With the four new crew needing to travel, United gate agents sought four volunteers from among the passengers seated on the aircraft. United did have one later flight that evening, but it was already full. Mindful of the substantial delay that volunteering passengers would face, the agent offered a \$800 travel credit plus hotel accommodations and means. (**Exhibit 6** presents the schedule of flights from Chicago to Louisville that day.) No passengers accepted.

For lack of volunteers, a gate agent therefore indicated that the IDB selection process would determine which customers would be asked to leave the plane. The first two passengers left uneventfully and received compensation. The United agent next approached the Daos, but David refused to leave. One other customer volunteered to leave for \$1,000, an amount United was prepared to pay, but United needed two volunteers, necessitating that one of the Daos would be IDB'ed nonetheless.

Discussions continued between airline staff and David Dao. He refused to leave his seat, stating that he was a physician and needed to see patients in the morning. As staff approached him at his seat, several passengers began recording the discussion using their smartphones. "Why did they choose me?" Dao asked airline staff in a recording that later circulated. He continued: "I paid for the flight." Airline staff pointed to security officers already on the plane and told Dao: "You see CPD staff over there? I'm telling you, it's gonna get way worse."<sup>a</sup>

Seconds later, airline staff directed the security officers to assist. Three airport security officers came to Dao's seat—two in officer uniforms including jackets that said "Police," and one wearing jeans. Footage of the incident shows Dao protesting: "Who will take care of my patients in the hospital tomorrow? ... I need to be at work at 8:00 tomorrow... I am not going."<sup>17</sup>

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<sup>a</sup> Though accredited as law enforcement officers, the security staff worked for the Chicago Department of Aviation, an agency independent of the Chicago Police Department. The agent's use of "CPD" appears to be incorrect.

In video recordings, one passenger could be heard commenting, "Don't do that, guys. Come on." A second said, "This is nuts," while others added "He's a doctor" and "That's not right."

While Dao screamed in protest, officers dragged him from his seat. The outer armrest of Dao's seat could be pivoted upward (a feature intended to assist disabled passengers in sliding from a wheelchair into their seat), but officers did not lift Dao's armrest, and as they dragged him over it, he hit his head and face on the armrest. Despite his apparent injuries, the officers continued to drag him, bleeding, down the length of the plane on his back. Other passengers expressed their disapproval. One woman exclaimed, "Oh my god, look what you did to him" and later "This is horrible." A man remarked with sarcastic praise, "Good work, way to go."

Shortly after security had removed him from the plane, the disoriented Dao managed to run back on. He sprinted to the back of the plane and repeated "I have to go home" and later "just kill me."

United removed all passengers from the plane and assessed the situation. Flight 3411 ultimately departed about two hours late and arrived in Louisville without further incident. Meanwhile, Dao was taken to the hospital for care. Subsequent news reports indicated that his injuries were severe: he had suffered a concussion, a broken nose, and two lost teeth.

A same-day report from Chicago Department of Aviation Police officer James Long claimed that Dao was "swinging his arms up and down with a closed fist," then "started flailing and fighting" as he was removed.<sup>18</sup> If these events occurred, they were not captured in passengers' videos.

## Public Response

Other passengers posted videos of the Dao incident, initially to Twitter but also to YouTube and other services. Louisville resident Tyler Bridges, among the first to post, said that "it felt like something the world needed to see."<sup>19</sup> The footage quickly appeared on Facebook, where the first post was viewed more than 19 million times before it was removed from the platform.<sup>20</sup> The public was outraged. United's Twitter account was flooded with sarcastic quips: "@united is basically saying; 'We asked for volunteers and no one said yes, so we called the cops'" and "'For the comfort and safety of the other passengers, please remember we will be resorting to cannibalism BY GROUP NUMBER' #united."

Online activity caught the attention of major media. The next morning, the story was national news with juicy headlines such as "Dragged passenger kicks and screams his way off overbooked flight" and "New video shows bloodied United Airlines passenger saying 'just kill me.'" The incident also sparked a reaction against discrimination and police aggression, prompting members of the Asian American and Muslim communities to protest outside United facilities. Tuyet Le of the Asian American Coalition commented in an interview: "This level of police enforcement should be appalling to everyone."<sup>21</sup>

Reactions were especially negative in Asia, where some critics thought Dao was chosen due to his race. "Why are Chinese being bullied everywhere?" asked one user on Weibo, a Chinese social network.<sup>22</sup>

A minority of respondents thought Dao was out of line. One blogger called Dao a "hysterical toddler" whose misconduct was just as noteworthy as United's. Some suggested that Dao could and should have gotten off the plane peacefully; that passengers must do what airport staff and security staff instruct; and that no one should be surprised that there are special rules on airplanes or harsh penalties for those who violate airline policies or ignore staff instructions. Proponents of this view argued that Dao was trespassing once United asked him to get off.

## United's Response

United's first public response came the next morning, April 10, when United's Twitter account posted a four-sentence statement attributed to Oscar Munoz, calling the event "upsetting" and "apologiz[ing] for having to re-accommodate these customers." **Exhibit 7** presents the full statement.

Later that day, Munoz wrote a letter to United employees. He began by saying he was "upset" by what had happened on United flight 3411. Yet he also praised employees who "followed established procedures for dealing with situations like this," noting that employees "were left with no choice" but to proceed as they did. Munoz also criticized Dao for "continu[ing] to resist" and "def[ying] both our crew and security officials." **Exhibit 8** presents the full letter.

United's response largely prompted a negative public reaction. A headline in the *New York Post* exclaimed "Tone-deaf United CEO thinks things are going just fine." *Vanity Fair* called United's statements "the worst possible response." *PR Week* had honored Oscar Munoz as its "Communicator of the Year" in an award just a month earlier, but after the Dao incident, magazine staff remarked that "if PR Week was choosing its Communicator of the Year now, we would not be awarding it to Oscar Munoz."

These reactions revealed that the public expected United to say more and to do more. Yet Munoz's letter to employees indicated that United staff had done exactly as they were trained. What more could Munoz ask of them? More generally, what should Munoz and United do to make this right?

**Exhibit 1** Department of Transportation Rules—Oversales**§ 250.2 Applicability.**

This part applies to every carrier, as defined in § 250.1, with respect to scheduled flight segments using an aircraft that has a designed passenger capacity of 30 or more passenger seats, operating in (1) interstate air transportation or (2) foreign air transportation with respect to nonstop flight segments originating at a point within the United States.

**§ 250.2a Policy regarding denied boarding.**

In the event of an oversold flight, every carrier shall ensure that the smallest practicable number of persons holding confirmed reserved space on that flight are denied boarding involuntarily.

**§ 250.2b Carriers to request volunteers for denied boarding.**

(a) In the event of an oversold flight, every carrier shall request volunteers for denied boarding before using any other boarding priority.

(b) Every carrier shall advise each passenger solicited to volunteer for denied boarding, no later than the time the carrier solicits that passenger to volunteer, whether he or she is in danger of being involuntarily denied boarding and, if so, the compensation the carrier is obligated to pay if the passenger is involuntarily denied boarding.

**§ 250.3 Boarding priority rules.**

(a) Every carrier shall establish priority rules and criteria for determining which passengers holding confirmed reserved space shall be denied boarding on an oversold flight in the event that an insufficient number of volunteers come forward. Such rules and criteria shall reflect the obligations of the carrier set forth in §§ 250.2a and 250.2b to minimize involuntary denied boarding and to request volunteers, and shall be written in such manner as to be understandable and meaningful to the average passenger. Such rules and criteria shall not make, give, or cause any undue or unreasonable preference or advantage to any particular person or subject any particular person to any unjust or unreasonable prejudice or disadvantage in any respect whatsoever.

(b) Boarding priority factors may include, but are not limited to, the following:

- (1) A passenger's time of check-in;
- (2) Whether a passenger has a seat assignment before reaching the departure gate for carriers that assign seats;
- (3) The fare paid by a passenger;
- (4) A passenger's frequent-flyer status; and
- (5) A passenger's disability or status as an unaccompanied minor.

**§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.**

(a) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation in interstate air transportation to passengers who are denied boarding involuntarily from an oversold flight as follows:

(1) No compensation is required if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination not later than one hour after the planned arrival time of the passenger's original flight;

(2) Compensation shall be 200% of the fare to the passenger's destination or first stopover, with a maximum of \$675, if the carrier offers alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and

(3) Compensation shall be 400% of the fare to the passenger's destination or first stopover, with a maximum of \$1,350, if the carrier does not offer alternate transportation that, at the time the arrangement is made, is planned to arrive at the airport of the passenger's first stopover, or if none, the airport of the passenger's final destination less than two hours after the planned arrival time of the passenger's original flight. ...

(d) The requirements of this section apply to passengers with "zero fare tickets." The fare paid by these passengers for purposes of calculating denied boarding compensation shall be the lowest cash, check, or credit card payment charged for a ticket in the same class of service on that flight.

(e) The Department of Transportation will review the maximum denied boarding compensation amounts prescribed in this part every two years ...

#### **§ 250.8 Denied boarding compensation.**

(a) Every carrier shall tender to a passenger eligible for denied boarding compensation, on the day and place the denied boarding occurs, except as provided in paragraph (b), cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5.

(b) Where a carrier arranges, for the passenger's convenience, alternate means of transportation that departs before the payment can be prepared and given to the passenger, tender shall be made by mail or other means within 24 hours after the time the denied boarding occurs.

#### **§ 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.**

(a) Every carrier shall furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria. The carrier shall also furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier.

#### **§ 250.10 Report of passengers denied confirmed space.**

(a) Each reporting carrier as defined in § 234.2 of this chapter and any carrier that voluntarily submits data pursuant to § 234.7 of this chapter shall file, on a quarterly basis, the information specified in BTS Form 251

Source: Excerpted and adapted from 14 CFR § 250.

**Exhibit 2** United Conditions of Carriage—Rule 25 Denied Boarding Compensation

Definitions: Oversold Flight means a flight where there are more Passengers holding valid confirmed Tickets that check-in for the flight within the prescribed check-in time than there are available seats.

1. Request for Volunteers - UA will request Passengers who are willing to relinquish their confirmed reserved space in exchange for compensation in an amount determined by UA. The travel certificate will be valid only for travel on UA or designated Codeshare partners for one year from the date of issue and will have no refund value. If a Passenger is asked to volunteer, UA will not later deny boarding to that Passenger involuntarily unless that Passenger was informed at the time he was asked to volunteer that there was a possibility of being denied boarding involuntarily and of the amount of compensation to which he/she would have been entitled in that event.

2. Boarding Priorities - If a flight is Oversold, no one may be denied boarding against his/her will until UA asks for volunteers who give up their reservations in exchange for compensation as determined by UA. If there are not enough volunteers, Passengers may be denied boarding involuntarily ... based on fare class, itinerary, frequent flyer program membership, and the time in which the passenger presents himself for check-in without seat assignment.

3. Transportation for Passengers Denied Boarding - When UA is unable to provide previously confirmed space due to an Oversold flight, UA will provide transportation to such Passengers ... on its own flight to the Destination without Stopover on its next flight on which space is available at no additional cost to the Passenger, regardless of class of service. If space is available on another Carrier's flight regardless of class of service, such flights may be used upon United's sole discretion and the Passenger's request at no additional cost to the Passenger only if such flight provides an earlier arrival than the UA flight offered in 3) a) above.

4. Compensation for Passengers Denied Boarding Involuntarily - UA shall pay compensation to Passengers denied boarding involuntarily from an Oversold Flight at the rate of 200% of the fare to the Passenger's first Stopover or, if none, Destination, with a maximum of 675 USD if UA offers Alternate Transportation that, at the time the arrangement is made, is planned to arrive at the Passenger's Destination or first Stopover more than one hour but less than two hours after the planned arrival time of the Passenger's original flight. If UA offers Alternate Transportation that is planned to arrive at the Passenger's Destination or first Stopover more than two hours after the planned arrival time of the Passenger's original flight, UA shall pay compensation at the rate of 400% of the fare to the Passenger's Stopover or Destination with a maximum of 1350 USD.

5. Payment Time and Form for Passengers Traveling Between Points within the United States or from the United States to a Foreign Point - Compensation in the form of check will be made by UA on the day and at the place where the failure to provide confirmed reserved space occurs, and if accepted by the Passenger, the Passenger will provide a signed receipt to UA.

6. Limitation of Liability - If UA's offer of compensation pursuant is accepted by the Passenger, such payment will constitute full compensation for all actual or anticipatory damages incurred by the Passenger. If UA's offer is not accepted, UA's liability is limited to actual damages proved not to exceed 1350 USD per Ticketed Passenger... Passenger will be responsible for documenting the actual damages claimed. UA shall not be liable for any punitive, consequential or special damages arising out of UA's failure to provide the Passenger with confirmed reserved space.

Source: Excerpted and adapted from United Airlines, Contract of Carriage.

**Exhibit 3** United Express Carriers

<b>Airline</b>	<b>Fleet size for United Express</b>	<b>Other activities</b>
Cape Air	2	Partners with American Airlines, jetBlue, and United Express
CommutAir	34	Operates solely as United Express
ExpressJet	129	106 other aircraft operating as American Eagle and Delta Connection
GoJet	25	29 other aircraft operating as Delta Connection
Mesa Airlines	68	85 other aircraft operating as American Eagle
Republic Airlines	54	116 other aircraft operating as American Eagle and Delta Connection
Skywest Airlines	153	234 other aircraft operating as American Eagle, Delta Connection, and others
Trans States Airlines	61	93 other aircraft operating as American Eagle and Delta Connection

Source: Casewriters, based on "United Airlines Aircraft," - <https://www.united.com/web/en-US/content/travel/inflight/aircraft/default.aspx>; and United Express carrier sites.

**Exhibit 4** United Summary of Its Relationship with Regional Carriers

United has contractual relationships with various regional carriers to provide regional jet and turboprop service branded as United Express. These regional operations are an extension of the United mainline network. This regional service complements our operations by carrying traffic that connects to our mainline service and allows flights to smaller cities that cannot be provided economically with mainline aircraft. Eight regional carriers provided contracted capacity to United under capacity purchase agreements ("CPAs"). Under these CPAs, United pays the regional carriers contractually agreed fees (carrier-controlled costs) for operating these flights plus a variable reimbursement (incentive payment for operational performance) based on agreed performance metrics. The fees for carrier-controlled costs are based on specific rates for various operating expenses of the regional carriers, such as crew expenses, maintenance and aircraft ownership, some of which are multiplied by specific operating statistics (e.g., block hours, departures) while others are fixed monthly amounts. Under these CPAs, United is responsible for all fuel costs incurred as well as landing fees, facilities rent and other costs, which are either passed through by the regional carrier to United without any markup or directly incurred by United. In return, the regional carriers operate this capacity exclusively for United, on schedules determined by United. United also determines pricing and revenue management, assumes the inventory and distribution risk for the available seats and permits mileage accrual and redemption for regional flights through its MileagePlus loyalty program.

Source: Excerpted and adapted by casewriter from "United Continental Holdings, Inc. 10-K," February 23, 2017.

**Exhibit 5** United Contract with Republic Airlines: Section “Inventory”

United shall be entitled to 100% of the fares and prorates received by United or Contractor in connection with any fares attributable to passengers who travel on Contractor's United Express Services.... United will have the sole right to use, set and control availability, levels and use of all seat inventory for the aircraft used by Contractor in Contractor's United Express Services. United will take all revenue and inventory risk and will maintain inventory and pricing responsibility.

Contractor is prohibited from providing positive space leisure travel, or any other confirmed leisure travel that requires removal of a seat from inventory, to any person other than the people outlined in Appendix J, on Contractor's United Express flights without the prior written consent of United....

Positive space travel is permitted for Contractor's, Contractor's affiliates and United's employees for actual business purposes, including deadheading flight crews, and for Contractor's employees and Contractor's affiliates and Eligibles in emergency situations only. Contractor may not issue positive space business travel to anyone other than Contractor's own employees and Contractor's affiliates' employees and only in connection with business purposes and emergency situations related to United Express Services.

If Contractor issues tickets in violation of this provision in any form, within two (2) years of each such violation, Contractor may be billed via the ACH, and Contractor will pay United, the full unrestricted fare for the class of service provided on such route for any such inappropriate ticketing. Contractor also agrees to comply with all rules and regulations for positive space and space available travel as outlined in the Related Agreements.

Source: Excerpted and adapted from “United Express Agreement, by and between United Air Lines, Inc. and Republic Airline Inc., dated February 9, 2004,” within Republic Airlines 10-K, December 31, 2005. Available at [https://www.sec.gov/Archives/edgar/data/1159154/000115915407000011/exhibit10\\_41.htm](https://www.sec.gov/Archives/edgar/data/1159154/000115915407000011/exhibit10_41.htm).

Note: Republic Airlines in 2005 acquired Shuttle America which had entered into the above-quoted contract with United. The 2005 filing, quoted above, is the most recent publicly-available document that provided relevant terms of United’s contract with Republic or a Republic predecessor. United’s contracts with other United Express carriers were understood to be similar.

**Exhibit 6** Flight Schedule, Chicago O’Hare to Louisville, Sundays in Spring 2017

Departure Time	Arrival Time	Operator
7:30am	9:50am	Operated by ExpresJet DBA United Express
8:20am	10:30am	Operated by Envoy Air DBA American Eagle
11:55am	2:15pm	Operated by Trans States DBA United Express
12:15pm	2:30pm	Operated by SkyWest DBA American Eagle
2:55pm	5:17pm	Operated by Skywest DBA United Express
5:40pm	8:02pm	Operated by Republic Airlines DBA United Express
6:40pm	8:54pm	Operated by Envoy Air DBA American Eagle
9:00pm	11:22pm	Operated by Trans States Airlines DBA United Express

Source: Casewriters, from airline reservation system records.

Note: Flight schedule presents a subsequent Sunday in spring 2017. Flight schedule for April 9, 2017 is understood to be substantially the same.

**Exhibit 7** United's initial public statement as to United 3411

Source: Twitter, @united, April 10, 2017, 9:27am.

**Exhibit 8** United initial letter to employees as to United 3411

Dear Team,

Like you, I was upset to see and hear about what happened last night aboard United Express Flight 3411 headed from Chicago to Louisville. While the facts and circumstances are still evolving, especially with respect to why this customer defied Chicago Aviation Security Officers the way he did, to give you a clearer picture of what transpired, I've included below a recap from the preliminary reports filed by our employees.

As you will read, this situation was unfortunately compounded when one of the passengers we politely asked to deplane refused and it became necessary to contact Chicago Aviation Security Officers to help. Our employees followed established procedures for dealing with situations like this. While I deeply regret this situation arose, I also emphatically stand behind all of you, and I want to commend you for continuing to go above and beyond to ensure we fly right.

I do, however, believe there are lessons we can learn from this experience, and we are taking a close look at the circumstances surrounding this incident. Treating our customers and each other with respect and dignity is at the core of who we are, and we must always remember this no matter how challenging the situation.

Oscar

**Summary of Flight 3411**

- On Sunday, April 9, after United Express Flight 3411 was fully boarded, United's gate agents were approached by crewmembers that were told they needed to board the flight.
- We sought volunteers and then followed our involuntary denial of boarding process (including offering up to \$1,000 in compensation) and when we approached one of these passengers to explain apologetically that he was being denied boarding, he raised his voice and refused to comply with crew member instructions.
- He was approached a few more times after that in order to gain his compliance to come off the aircraft, and each time he refused and became more and more disruptive and belligerent.
- Our agents were left with no choice but to call Chicago Aviation Security Officers to assist in removing the customer from the flight. He repeatedly declined to leave.
- Chicago Aviation Security Officers were unable to gain his cooperation and physically removed him from the flight as he continued to resist - running back onto the aircraft in defiance of both our crew and security officials.

Source: United internal communication republished as Associated Press, "United CEO's 3 statements on passenger dragged off flight," April 11, 2017.

## General References

There is no single authoritative source for the details of Dao's travel and injury. A press conference, held by his attorneys, offers a trustworthy statement of a portion of events.

"David Dao Daughter Speaks Out, Lawyer Press Conference United Airlines Dragged Passenger," *Youtube - LiveStreamTVNews*, April 13, 2017. [http://youtube.com/watch?v=yhZQeS\\_Kozw](http://youtube.com/watch?v=yhZQeS_Kozw)

We credit the statements made in the press conference based on their consistency with other reports including on-board video.

The casewriters pieced together other facts from multiple sources, favoring the following news reports which included multiple indicia of trustworthiness:

- Daniel Victor and Matt Stevens, "United Airlines Passenger Is Dragged from an Overbooked Flight," *The New York Times*, April 10, 2017.
- Mitch Smith, "United Airlines Passenger May Need Surgery, Lawyer Says," *The New York Times*, April 13, 2017.
- Abby Ohlheiser, "The full timeline of how social media turned United into the biggest story of the country," *The Washington Post*, April 11, 2017.

We also consulted United's official final report: "United Express Flight 3411 Review and Action Report," April 27, 2017, <https://hub.united.com/united-review-action-report-2380196105.html>.

Other passengers made and posted at least eight separate onboard videos:

- Tyler Bridges, *Twitter*, April 9, 2017, [https://twitter.com/Tyler\\_Bridges/status/851214160042106880/video/1](https://twitter.com/Tyler_Bridges/status/851214160042106880/video/1).
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  - <sup>6</sup> 14 CFR 250.3
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