OH, THE PLACES YOU WON'T GO: HOW THE FAA CAN KEEP WASHINGTON, DC'S NATIONAL AIRPORT SAFE

MATT PETRILLO*

The Federal Aviation Administration (FAA) has suddenly found itself thrust to the forefront of national affairs in the wake of America's deadliest aviation accident in over two decades. The tragic midair collision of an American Airlines passenger jet and a U.S. Army helicopter above Washington National Airport (DCA) in January 2025 killed sixty-seven people and shocked the nation. The FAA must consider what it can do to safeguard travelers at the most overcrowded airport in the country—especially when help from the White House and Congress may never arrive.

Congress has repeatedly mandated more flights at DCA, the closest airport to Washington, DC's great halls of power, despite the pleas of aviation experts and local lawmakers. However, the FAA and the U.S. Department of Transportation (DOT) retain a measure of discretion regarding not only which airlines and destinations are approved, but how often airlines are required to operate to retain their hard-won landing permissions ("slots," in industry parlance). This Comment explores how the FAA and DOT may honor the dictates of Congress while, among other things, incentivizing airlines themselves to ease traffic at America's most dangerous airport.

---

* J.D. Candidate, American University Washington College of Law, 2026; B.A. History, University of Michigan, 2020. Credit to the talented staff of the *Administrative Law Review*, especially my editors Sarah Neal and Caroline Russell, for their sterling suggestions and corrections. Every single day of law school, I thank my lucky stars for friends as brilliant and radiant as Sophia Brodnax, Ruchika Sharma, and Jordan Taylor. I could not be more grateful to my parents Robert and Kelli, and to my sister and best friend Emma, for their love and support. Most of all, to Alexander Rivard, for buttressing me through so much, for pushing me to do things I never would, and for giving me the happiest memories of my life. I love you, always.

INTRODUCTION

When President Richard M. Nixon became the only sitting president to ever fly commercial— a cost-saving gimmick during the 1970s energy crisis—he had to depart from an airport a full twenty-two miles away, Washington Dulles International Airport (IAD), instead of flying via Washington National Airport (DCA)[1] just over three miles from the White House.[2] Even the most powerful man on Earth, flying to his native Los Angeles for a

1. Washington National Airport was officially renamed "Ronald Reagan Washington National Airport" in 1998; the change was hotly contested, however, owing to President Reagan's deeply anti-government outlook and his controversial breaking of a 1981 air traffic controller strike. *See generally* Sadie Dingfelder & Holly J. Morris, *National? Reagan? DCA? 17 Years Later, Locals Still Can't Agree on the Name of the Airport in Question*, WASH. POST (Apr. 1, 2015), https://www.washingtonpost.com/express/wp/2015/04/01/national-reagan-dca-17-years-later-locals-still-cant-agree-on-the-name-of-the-airport-in-question/ [https://perma.cc/3AKZ-TW2G] (showing that a plurality of current and former DC-area residents use the "National" moniker and that the "Reagan" name is preferred more so by nonlocals); *see also infra* notes 125–127 and accompanying text (elucidating and contextualizing further President Reagan's actions during the 1981 strike). For consistency with both the historical record and local preferences, this Comment will refer to the airport as "DCA," "National," or "National Airport."

2. *See* Paul Musgrave, *Richard Nixon's Last Christmas Trick*, FOREIGN POL'Y (Dec. 24, 2021, 6:00 AM), https://foreignpolicy.com/2021/12/24/nixon-christmas-commercial-flight/ [https://perma.cc/3AKZ-TW2G]; GOOGLE MAPS, https://www.google.com/maps/@38.875,-77.05,14z [https://perma.cc/UUR9-5AKQ] (last visited July 15, 2025) (right-click on "Ronald Reagan Washington National Airport"; then select "Measure distance"; then left-click the location to calculate distance to, e.g. the White House) (giving the distance as the crow flies from DCA to the White House as 3.23 miles).

Christmas vacation, found himself ensnared and frustrated by National's unusual perimeter rule preventing flights from originating beyond a certain distance from the airport itself.[3] Los Angeles International Airport—about 2,300 miles from DCA—fell well beyond the 650-mile perimeter rule in effect at National in 1973, forcing any California-bound flights to depart not from convenient National, but from faraway Dulles.[4] Today, the perimeter rule generally bans flights from airports more than 1,250 miles distant.[5] Codified by Congress in 1997,[6] the rule was originally instituted by the Federal Aviation Administration ("FAA" or "Administration") in 1966, when the federal government still owned and operated DCA.[7]

National Airport's perimeter rule, and the regulatory system of slots and slot exemptions which support it, form the nucleus of a half-century of administrative, legislative, and judicial fights about who precisely Washington, DC (also "the District of Columbia" or simply "the District") is for, how accessible it should be, and how best to balance the safety and security of our capital's airspace with the demands of bureaucracy and democracy alike.[8]

As the closest airport to the White House, Capitol Hill, and the National Mall, National Airport is a crucially important gateway to America's capital city.[9] In 2023, DCA was the twenty-fourth busiest airport in the United States, serving over 25 million passengers.[10] DCA's main runway is the

3. *See* Jeff Davis, *A History of the Perimeter Rule at Washington Reagan National Airport*, ENO CTR. FOR TRANSP. (June 16, 2023), https://enotrans.org/article/a-history-of-the-perimeter-rule-at-washington-reagan-national-airport/ [https://perma.cc/QQ6D-FT5F].

4. *See id.*

5. *See DCA Reagan National–Slot & Perimeter Rules*, REAGAN NAT'L, https://www.flyreagan.com/about-airport/aircraft-noise-information/dca-reagan-national-slot-perimeter-rules [https://perma.cc/2DEY-K94C] (last visited July 15, 2025).

6. Codification of Transportation Terms, Pub. L. No. 105-102, § 2(26), 111 Stat. 2204, 2213 (1997) (codified at 49 U.S.C. § 49109).

7. *See* Davis, *supra* note 3.

8. *See, e.g.*, Kate Kelly & Mark Walker, *The Frequent Fliers of Congress Consider New Flights for Washington Airport*, N.Y. TIMES (July 4, 2023), https://www.nytimes.com/2023/07/04/us/politics/dca-long-distance-flights.html [https://perma.cc/T4R7-LPLD] ("The effort to relax the so-called perimeter rule is caught up in battles for market share among airlines, local politics in the Washington area and friction over the F.A.A.'s chronic and worsening problems managing air traffic and safety.").

9. *See supra* note 2 and accompanying text; GOOGLE MAPS, https://www.google.com/maps/@38.875,-77.05,14z [https://perma.cc/UUR9-5AKQ] (last visited July 15, 2025) (right-click on "Ronald Reagan Washington National Airport"; then select "Measure distance"; then left-click the location to calculate distance to, e.g. the U.S. Capitol) (giving the distance as the crow flies from DCA to the U.S. Capitol as 3.14 miles and to the Lincoln Memorial as 2.71 miles).

10. *See* FED. AVIATION ADMIN., FINAL CY23 ENPLANEMENTS AT ALL COMMERCIAL

busiest in the entire country, handling over one-third more daily traffic than all but one of its peers;[11] during the average day's operating hours, it sees more than one takeoff or landing every minute.[12] National is among the top five airports in the country for ground stops and delays, and a 2023 FAA report concluded that the airport's struggles to keep operations running on schedule largely stemmed not from nationwide, systemic problems, but from capacity issues specific to the airport itself.[13] The same report predicted that adding just twenty more daily flights would saddle National with 25.9% more delays.[14] Adding twenty-five more daily flights—an overall increase of approximately 3%—would increase delays by fully one-third.[15]

In May 2024, President Joe Biden signed the FAA Reauthorization Act of 2024, which included a requirement for ten more daily flights at National despite the evident congestion and crowded airspace at DCA.[16] The act marked the fourth time this century that Congress mandated more flights at National Airport by adding permanent slot exemptions to an FAA reauthorization.[17]

SERVICE AIRPORTS 1 (Oct. 2, 2024), https://www.faa.gov/sites/faa.gov/files/2024-10/cy23-commercial-service-enplanements.pdf [https://perma.cc/MZQ5-DE2D]; *Airports Authority Releases Passenger Totals for 2024*, METRO. WASH. AIRPORTS AUTH. (Feb. 26, 2025, 10:31 AM), https://www.mwaa.com/news/airports-authority-releases-passenger-totals-2024 [https://perma.cc/N8TL-6HQY] (reporting DCA's 2024 passenger total as 26.29 million).

11. *See Protecting the DCA Perimeter*, METRO. WASH. AIRPORTS AUTH., https://www.mwaa.com/protecting-dca-perimeter [https://perma.cc/6AAJ-7ZCL] (last visited July 15, 2025) (noting that DCA's Runway 01/19 saw an average of 819 takeoffs and landings per day in March 2023, compared with 781 at Los Angeles's (LAX) busiest runway, 607 at Newark's (Liberty), and 599 at Chicago's (O'Hare)).

12. *Id.*

13. *See* FED. AVIATION ADMIN.: AIR TRAFFIC ORG., CAP. ACCESS ALL.: DCA AIR SERV. ANALYSIS 2 (2023) [hereinafter DCA AIR SERVICE ANALYSIS] https://www.flyreagan.com/sites/flyreagan.com/files/2023-06/FAA-DCA-Air-Service-Analysis-Memo.pdf [https://perma.cc/8GAE-87HQ] (concluding that "[m]ost delays at DCA are not attributable to the national airspace" and "[a]necdotally, gates do appear to be a significant constraint").

14. *Id.*

15. *See id.*; METRO. WASH. AIRPORTS AUTH., *supra* note 11 (giving the average total of daily takeoffs and landings on National's main runway as 819). DCA's main runway handles over 90% of the airport's traffic. *Id.*

16. *See* 49 U.S.C.A. § 41718(i) (West 2024) (directing that the Secretary of Transportation "*shall* grant, by order, 10 exemptions" from the slot and perimeter rules at DCA; granting these exemptions is thus mandatory and cannot be ignored by DOT, even if the agency considers the additions imprudent or unsafe) (emphasis added).

17. *See id.*; FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 414, 126 Stat. 11, 90 (2012); Vision 100—Century of Aviation Reauthorization Act, Pub. L. No. 108-176, § 425, 117 Stat. 2490, 2555 (2003); Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, § 231, 114 Stat. 61, 106–12 (2000); *Slot*

Such reauthorizations occur every four to five years; only one reauthorization since 2000 did not include a mandatory increase at DCA.[18] This increase came despite the opposition of local residents and legislators, the agency that operates DC's airports, and the FAA itself.[19] The Act was passed after not only widely publicized "near-miss" incidents at DCA, but also many undisclosed close calls across the country, which involved every major U.S. airline.[20] The required additional flights at National were awarded to various airlines in December 2024.[21]

At 8:48 PM on January 29, 2025, American Airlines Flight 5342 from Wichita, Kansas, collided with a U.S. Army Black Hawk helicopter above the Potomac River while on final approach to National Airport.[22] All sixty-seven people on board both aircraft were killed; there were sixty passengers, two pilots, and two flight attendants aboard the commercial jet, and two pilots and one crew chief on the Black Hawk.[23] The passenger aircraft was

---

Administration – Slot Definition, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_definition [https://perma.cc/7R3M-ZH43] (Apr. 24, 2020) (defining a slot as advance "authorization to either take-off or land at a particular airport on a particular day during a specified time period" as distinct from air traffic controller permission). For example, a Delta Air Lines slot at DCA would be tied to, say, the 9:00 AM hour on Tuesdays, but not to another airport: Delta could use that slot to fly to Detroit, Michigan, one week and Atlanta, Georgia, the next, so long as each flight is operated within the specified time frame and on the specified day. Congress has authorized slot exemptions at DCA, which allow certain airlines to operate additional flights beyond their normal slots. *See id.*

18. *See* Air Line Pilots Ass'n Gov't Affs. Dep't Staff, *ALPA Protects Aviation Safety and Pilot Rights in FAA Reauthorization Legislation*, AIR LINE PILOT (Aug. 2024), https://www.alpa.org/news-and-events/air-line-pilot-magazine/alpa-protects-rights [https://perma.cc/9DUC-HHS6]; *see generally* FAA Reauthorization Act of 2018, 49 U.S.C. § 40101 (lacking a mandatory increase in slot exemptions at DCA).

19. *See infra*, Part I.C.

20. *See, e.g.*, Joseph Olmo & Sophia Barnes, *Another Near-Collision on the Runway at Reagan National Airport Sparks FAA Investigation*, NBC4 WASH. (May 30, 2024, 1:19 PM), https://www.nbcwashington.com/news/local/transportation/another-near-miss-on-the-runway-at-reagan-national-airport-sparks-faa-investigation/3628167 [https://perma.cc/2EF6-FQGV]; Sydney Ember & Emily Steel, *Airline Close Calls Happen Far More Often Than Previously Known*, N.Y. TIMES (Aug. 21, 2023), https://www.nytimes.com/interactive/2023/08/21/business/airline-safety-close-calls.html [https://perma.cc/6ZXX-GX8P].

21. *See* U.S. DEP'T OF TRANSP., Order 2024-12-8 (Dec. 17, 2024).

22. John Raby, *What is Known About the Deadly Collision Between a Passenger Jet and Army Helicopter*, ASSOCIATED PRESS (Feb. 4, 2025, 6:55 PM), https://apnews.com/article/ronald-reagan-national-airport-aircraft-crash-9d79051a9e535bd855df5a4e5553b2e9 [https://perma.cc/RS3N-74MG].

23. NAT'L TRANSP. SAFETY BD., ACCIDENT NO. DCA25MA108, AVIATION

seconds away from landing on Runway 33, a subsidiary runway used to help alleviate the overcrowding on DCA's main runway.[24] Despite the short length of Runway 33, and the fact that planes approaching it must cross designated helicopter corridors at a much lower altitude than if they were approaching the main runway, it is "very common" for DCA air traffic controllers (ATCs) to divert jets to the shorter runway.[25] Flight 5342 had initially been on approach to DCA's main runway when air traffic control asked it to switch to Runway 33.[26] Just two minutes before the collision, the tower at DCA cleared another plane waiting on the main runway for takeoff.[27]

The Black Hawk was on a routine training mission and its crew members were wearing night vision goggles as part of that mission.[28] The National Transportation Safety Board (NTSB), which investigates all civil aviation accidents in the United States, ascertained that the Black Hawk crew likely did not receive parts of multiple crucial transmissions from the tower at DCA in the seconds before the collision.[29] In the minutes before the collision, as the helicopter traveled south along an FAA-regulated corridor designated as Route 4, the helicopter pilots appeared to be confused as to their exact altitude.[30] At the moment of the collision, the Black Hawk was at an altitude of 278 feet, despite FAA restrictions requiring it not to exceed 200 feet on Route 4.[31] Concerningly, at investigative hearings in July and August 2025, an Army officer testified that a discrepancy of that magnitude between radar

---

INVESTIGATION PRELIMINARY REPORT 1 (2025) https://www.ntsb.gov/investigations/Documents/DCA25MA108%20Prelim.pdf [https://perma.cc/F5AK-KJK8].

24. Elena Shao, Leanne Abraham, Eli Murray & Lazaro Gamio, *Criss-Crossing Routes in D.C. Airspace Leave Little Room for Error*, N.Y. TIMES (Feb. 1, 2025), https://www.nytimes.com/interactive/2025/02/01/us/dca-air-traffic-plane-crash.html [https://perma.cc/8UVP-VXBZ]; Daniel S. Osipov, *Why in the World Does Reagan National Airport Have a Complicated Approach Path?*, SIMPLE FLYING (Aug. 7, 2025), https://simpleflying.com/reagan-national-airport-complicted-approach-path/ [https://perma.cc/DWP3-YXHH].

25. *See* Shao, Abraham, Murray & Gamio, *supra* note 24.

26. NAT'L TRANSP. SAFETY BD., *supra* note 23, at 4.

27. *Id.* at 6.

28. *Id.* at 1.

29. *See id.* at 5, 7 (speculating from the helicopter's voice recorder that the helicopter crew did not hear the tower's transmission that Flight 5342 was "circling" and that just before impact, the crew also did not hear the tower's instruction to "pass behind" Flight 5342).

30. *See id.* at 4 (reporting that the pilots gave differing statements as to their altitude and that the trainer pilot had to repeatedly advise the trainee pilot to descend to the required 200 feet).

31. *See id.* at 4, 8, 11.

altitude and barometric altitude—which NTSB Chair Jennifer Homendy said the crew was monitoring—was not abnormal.[32]

The helicopter crew was flying under "visual separation" rules, which are less stringent and allow multiple aircraft to fly in close proximity, so long as each crew can see the other craft.[33] Possibly, the Black Hawk pilots misidentified a more distant plane descending into DCA as Flight 5342—which the tower at DCA had instructed them to avoid—and did not notice the actual Flight 5342 at all.[34]

The airport's control tower was understaffed that night, contrary to FAA policy requiring separate controllers at DCA for planes and helicopters until 9:30 PM.[35] The tower notified the helicopter crew of Flight 5342's presence less than two minutes before the crash.[36] The NTSB report notes that just one second before the collision, ATC was giving landing permission to a different passenger plane.[37] Meanwhile, at that exact second, the passenger plane suddenly increased its pitch and rolled to the left—its pilots in all likelihood saw the Black Hawk headed straight at them.[38] Together, these findings sketch a modern-day Greek tragedy with manifold causes: understaffing, imprecise instrument readings, congested and poorly divided airspace, spotty

32. *See* Joe Hernandez, *3 Big Takeaways From the NTSB Hearing on the DCA Midair Collision*, NAT'L PUB. RADIO (Aug. 1, 2025, 9:36 PM), https://www.npr.org/2025/08/01/nx-s1-5490426/dca-midair-collision-ntsb-hearing-plane-black-hawk-helicopter [https://perma.cc/5WMR-T2JB] (quoting an Army officer's testimony that "a difference of 80 feet or so . . . would not be cause for alarm").

33. *See* Imogen Piper, Evan Hill, Alex Horton, Meg Kelly, Frank Hulley-Jones, Irfan Uraizee, et al., *3D Analysis Shows How Helicopter Pilots Could Have Mixed Up Jets in DCA Crash*, WASH. POST (Feb. 14, 2025), https://www.washingtonpost.com/investigations/interactive/2025/dc-plane-crash-black-hawk-helicopter-collision-timeline/ [https://perma.cc/B29A-H8HJ] (using a 3D recreation of the minutes before the collision to demonstrate experts' theory that the Black Hawk crew thought Flight 3130, directly ahead of them and brightly lit over the dark Potomac River, was Flight 5342).

34. *See id.*

35. *See* Mallory Moench, *Air Traffic Control Staffing 'Not Normal' During DC Crash - Officials*, BBC (Feb. 2, 2025), https://www.bbc.com/news/articles/cq5gyx09pj8o [https://perma.cc/REP5-8SV5]; Katie Shepherd, Aaron C. Davis, Victoria Craw, Olivia George & Ian Duncan, *Control Tower at National Airport Understaffed Before Deadly Collision*, WASH. POST (Jan. 31, 2025), https://www.washingtonpost.com/dc-md-va/2025/01/30/dc-plane-crash-helicopter-recovery-no-survivors-potomac-river/ [https://perma.cc/E6XP-3LDQ] (explaining that the helicopter control position is typically fully staffed from the hours of 10 AM through 9:30 PM).

36. NAT'L TRANSP. SAFETY BD., *supra* note 23, at 5–6.

37. *Id.* at 8.

38. *See id.*; Piper et al., *supra* note 34 (noting that the NTSB heard, through ATC transmissions, that the American Airlines pilots had "a verbal reaction" and that they subsequently increased their plane's pitch).

communication, and an airport with inadequate runway space for the volume of traffic it receives.[39]

The NTSB's preliminary report focused on the extremely limited separation between the corridors designated by the FAA for helicopter traffic near DCA and the flight path for aircraft descending onto Runway 33 as the primary reason for the collision.[40] On March 7, 2025, the NTSB issued a recommendation that Route 4 be closed to helicopter traffic when Runway 33 is being used for passenger traffic; the FAA implemented this recommendation one week later.[41] FAA staff had harbored doubts regarding, and duly warned superiors about, the safety of Route 4 even before the collision.[42] Chair Homendy lambasted the Administration for failing to act upon these internal admonitions: "Are you kidding me? Sixty-seven people are dead! How do you explain that? Our bureaucratic process?"[43]

Closure of Route 4, while a welcome step toward safer operations at DCA, does nothing to reduce the overall volume of passenger traffic that plagues National and contributed to the tragedy of Flight 5342.[44] For example, less than two months after the incident, a Delta Air Lines aircraft taking off from National and a U.S. Air Force jet—unaffected by the FAA's new restrictions on helicopter traffic—very narrowly avoided a collision after the control tower at DCA issued diversion instructions to both aircraft.[45] A fistfight had broken out between ATCs in the tower at DCA the night before that near-miss, reflecting the extreme stress and tension plaguing an understaffed FAA.[46] Just three weeks later, an American Airlines jet bound for New

39. *See supra* notes 24–37 and accompanying text.

40. *See generally* NAT'L TRANSP. SAFETY BD., DECONFLICT AIRPLANE AND HELICOPTER TRAFFIC IN THE VICINITY OF RONALD REAGAN WASHINGTON NAT'L AIRPORT (2025), [hereinafter DECONFLICT AIRPLANE AND HELICOPTER TRAFFIC] https://www.ntsb.gov/investigations/AccidentReports/Reports/AIR2501.pdf [https://perma.cc/CC46-ZB73] (discussing preliminary findings and data that suggest "the existing separation distances between helicopter traffic operating on Route 4 and aircraft landing on runway 33 are insufficient").

41. *See id.* at 7, 9; Press Release, Fed. Aviation Admin., FAA Statement on NTSB Recommendations for DCA (MAR. 14, 2025), https://www.faa.gov/newsroom/faa-statement-ntsb-recommendations-dca [https://perma.cc/2W77-EDQE].

42. Hernandez, *supra* note 32.

43. *Id.*

44. *See* DECONFLICT AIRPLANE AND HELICOPTER TRAFFIC, *supra* note 40, at 7–8.

45. *See* Pete Muntean, *Near-Collision Investigation Reveals Reagan National Airport Controllers Failed to Stop Flights During Military Flyover*, CNN (Apr. 8, 2025, 6:32 PM), https://www.cnn.com/2025/04/08/politics/reagan-national-airport-near-collision-investigation-military-flyover/index.html [https://perma.cc/BV62-GSXA] (finding that the aircraft were just five seconds from colliding).

46. *Id.*

York—carrying no fewer than six congressmembers—had its wing clipped by a taxiing plane while it idled on the tarmac.[47] One of those legislators noted afterward that such safety lapses are a natural outgrowth of the Trump Administration's controversial purge of FAA employees.[48]

Part I of this Comment examines the history of Washington National Airport and the current statutory and regulatory scheme in effect at both National and the other airports serving metropolitan Washington, DC.[49] Part II evaluates the formation and remit of the Federal Aviation Administration, looks at its oversight of both National Airport and other major airports across the United States, and finds the FAA has the ability to revise or retreat from its current policies.[50] Part III analyzes past claims of a constitutional right to travel into a given airport, such as DCA, and concludes that courts have consistently ruled against such arguments.[51] Part IV outlines a strategy for the FAA to relax its current regulations and ease congestion at National Airport while still honoring the requirements of the FAA Reauthorization Act of 2024.[52]

I. WASHINGTON, DC'S AIRPORTS

A. Washington National Airport

National Airport first opened for aircraft operations in 1941, after a laborious three-year construction process that involved filling in a portion of the Potomac River with nearly 20 million cubic yards of sand and gravel.[53] President Franklin D. Roosevelt, having grown "tired of waiting for Congress," made a recess appropriation of $15 million to fund the new airport.[54] Virginia and the District of Columbia soon quarreled over who owned the

47. Neil Vigdor, *Plane Carrying 6 Members of Congress Is Clipped at Reagan Airport*, N.Y. TIMES (Apr. 10, 2025), https://www.nytimes.com/2025/04/10/us/reagan-airport-planes-clip-wings.html [https://perma.cc/E6J5-2KGR].

48. *See id.* (quoting Rep. Josh Gottheimer) ("Just a reminder: Recent cuts to the FAA weaken our skies and public safety.").

49. *See infra* Part I.

50. *See infra* Part II.

51. *See infra* Part III.

52. *See infra* Part IV.

53. *History of Reagan National Airport*, REAGAN NAT'L, https://www.flyreagan.com/about-airport/history-reagan-national-airport [https://perma.cc/CFB8-Y9A4] (last visited Aug. 28, 2025).

54. *Id.*; Petula Dvorak, *The Humble Beginnings of National Airport*, WASH. POST (Feb. 1, 2025), https://www.washingtonpost.com/history/2025/02/01/reagan-national-history-dc-plane-crash/ [https://perma.cc/4VKD-ZQXP].

airport; dating back to 1846, the District's boundaries included the Potomac all the way to the Virginia shoreline.[55] But, it was an open question whether jurisdiction was to be determined using the original riverbank or the new one—created from what had been the District's water territory.[56] This tug-of-war between Virginia and the District was only resolved in 1945 by Congress, which passed a bill adopting Virginia's preferred interpretation of the border but vesting jurisdiction of DCA itself with the federal government.[57] Airports in the United States are typically owned by state or local governments and administered by independent airport authorities or commissions, making the arrangement then in existence at National and Dulles quite unusual.[58] Over the ensuing decades, the revenues from National were not collected by such a dedicated local or state entity—which would have directed the funds back into airport improvements or expansions—but rather went straight to the U.S. Treasury, fostering a reputation for benign neglect on the part of the federal government.[59] President Nixon even attempted to sell National and Dulles to Virginia entirely.[60]

Federal government inaction at National coincided with a period of explosive growth at the airport: by 1961, National's 4.7 million annual passengers made it the sixth-busiest airport on the planet.[61] National was linked to Washington, DC's incipient (and locally-run) subway system, Metro, in

55. *See* REAGAN NAT'L, *supra* note 53.

56. *Id.*

57. Act of Oct. 31, 1945, Pub. L. No. 79-208, §§ 101–02, 107, 59 Stat. 552, 552–53.

58. *See, e.g.*, Olivia Sutton, Amber Hennessy & Deron Pope, *Who Manages The Nation's Airports?*, U.S. CENSUS BUREAU (Dec. 10, 2024), https://www.census.gov/library/stories/2024/12/airport-authorities.html [https://perma.cc/23TE-TCKE] (counting a total of 435 such independent airport authorities and commissions in the United States, noting that these are concentrated in the Midwest and South and that a few major states, such as New York and Texas, do not make use of this arrangement); *see also infra* notes 66–68 and accompanying text (describing the eventual creation of a local agency to oversee both National and Washington Dulles International Airport (IAD)).

59. Douglas B. Feaver, *Years of Deal-Making Enabled Change From 'Disgrace' to Showplace*, WASH. POST (July 16, 1997), https://www.washingtonpost.com/wp-srv/local/longterm/library/airport/history.htm [https://perma.cc/3YQC-VQSG] (quoting a former FAA administrator as grousing that funding National and Dulles "was considered the 99th most important thing the [FAA] did, out of 104 . . . . And our construction [budget] was considered 103rd").

60. *Id.*

61. Marnix Groot, *The World's 10 Busiest Airports at the Dawn of the Jet Age*, AIRPORTHISTORY.ORG: BLUE CONCOURSE (Feb. 2, 2021), https://www.airporthistory.org/blue-concourse/the-worlds-busiest-airports-at-the-dawn-of-the-jet-age [https://perma.cc/6F9Y-3E2L]. Today, DCA is ranked 117th globally. *Id.*

1977.[62] By the late 1990s, 15% of the airport's daily passengers used Metro.[63] Though National has seen several major terminal expansions and renovations, notably in the 1950s and 1990s, its runways have remained virtually unaltered since 1956.[64]

It was not until the 1980s that passenger traffic at DCA finally plateaued at 15–16 million annually, a number it would maintain until the terrorist attacks of September 11, 2001.[65] This same decade saw the Reagan Administration transfer ownership of both National and Dulles to an independent, self-supporting interstate agency, the Metropolitan Washington Airports Authority (MWAA).[66] MWAA is controlled by a seventeen-member Board whose members are appointed by the President, the Mayor of the District of Columbia, and the Governors of Virginia and Maryland.[67] MWAA is charged with both the daily operation of National and Dulles and the long-term updates required to sustain each airport.[68] Today, MWAA envisions National as Washington, DC's primary "short-haul" airport while promoting Dulles as its "long-haul" airport.[69] MWAA states there is no possibility of runway additions or expansions at DCA due to the airport's riverside location.[70]

---

62. Stephen C. Fehr, *Metro-Terminal Link to Reduce Some Preflight Turbulence*, WASH. POST (July 16, 1997), https://www.washingtonpost.com/wp-srv/local/longterm/library/airport/metrorail.htm [https://perma.cc/RJ35-HJJJ].

63. *Id.* In 2023 that figure was 12%, with rideshares just edging out personal automobiles as the most common transportation method for DCA's users. *See* NAT'L CAP. REGION TRANSP. PLAN. BD., WASHINGTON-BALT. REG'L AIR PASSENGER SURV. –2023 29, (Oct. 2024) [hereinafter *Air Passenger Survey*] https://www.mwcog.org/file.aspx?D=99t3W1INu6vFDzNu40WVKV%2bgEQjJbZzdJ2KlafOpgT0%3d&A=rOwL%2b%2bHmVRz589nZFbir1Cw3pkrciWh%2b7KxnqZSvueI%3d [https://perma.cc/V6QA-UDEY].

64. *See* REAGAN NAT'L, *supra* note 53 (showing the runway has changed only slightly in length). The airport's 4.7 million annual passengers just five years after the runways' last alteration pale in comparison to its current yearly load of 25 million. *See* Groot, *supra* note 61; *supra* note 10 and accompanying text.

65. *See* REAGAN NAT'L, *supra* note 53 (noting the steady increase in passenger traffic until the late 1980s).

66. *Id.* (discussing the creation of the Metropolitan Washington Airports Authority (MWAA) "by legislation enacted by the Commonwealth of Virginia and the District of Columbia, with the consent of the United States Congress").

67. *About the Airports Authority*, METRO. WASH. AIRPORTS AUTH., https://www.mwaa.com/about-airports-authority [https://perma.cc/ZK6Q-NV8P] (last visited Aug. 28, 2025).

68. *Id.*

69. *See* REAGAN NAT'L., *supra* note 5 (explaining the roles of both airports in the context of the Perimeter Rule).

70. *See Protecting the DCA Perimeter*, METRO. WASH. AIRPORTS AUTH., https://www.mwaa.com/protecting-dca-perimeter [https://perma.cc/6WVC-BQDR] (last visited Aug. 28, 2025) (discussing the runway space constraints); *see also* Groot, *supra* note 61 (explaining that

The fallout from the January 2025 collision at National has been widespread, with February 2025 seeing three times the number of delayed flights and sixteen times the amount of cancelled flights as is typical for that month.[71] But as President George W. Bush put it in October 2001 when reopening DCA, "[t]his is the airport that brings our Nation's leaders to Washington to do the people's business."[72]

B. Washington, DC's Other Airports: IAD & BWI

Overcrowding at National Airport spurred Congress and President Harry S. Truman to authorize the construction of a second airport as soon as 1950, less than ten years after DCA first opened.[73] The site ultimately chosen for the airport—in Loudoun County, Virginia, about twenty-two miles from the National Mall—was the third location considered; sites much closer to the District at Andrews Air Force Base in Maryland and in Burke, Virginia were rejected due to local opposition.[74] Dulles International Airport (IAD) was duly inaugurated in 1962.[75] Unlike National, it was designed specifically to accommodate then-novel jet planes.[76] Dulles, which was originally built with three main runways, now boasts four to National's one, and is fourteen times larger than DCA by surface area.[77] Yet for decades, Dulles was woefully

---

the airport's constrained location prevented expansion and prompted construction of Dulles to meet long-term needs).

71. *See* Sean Cudahy, *Delays Up, Passenger Traffic Down at DCA Following Jan. 29 Crash, Government Layoffs*, POINTS GUY (Mar. 22, 2025), https://thepointsguy.com/news/reagan-national-airport-delays-up-passenger-traffic-down/ [https://perma.cc/UUN3-GJGZ] (citing the MWAA's statement that 8% of DCA flights in February 2025 were cancelled, compared to 0.5% in February 2024 and noting nearly 34% of flights were delayed).

72. Rebecca Tillery, *The Changing Face of General Aviation Security Regulation: What Is Being Done, What Needs to Be Done, and Why Does Anything Need to Be Done In The First Place?*, 71 J. AIR L. & COM. 307, 316 (2006).

73. *See* THERESA L. KRAUS, FED. AVIATION ADMIN., FAA'S "WHITE ELEPHANT" (2012), https://www.faa.gov/sites/faa.gov/files/about/history/milestones/Dulles_Celebrates_50_Years.pdf [https://perma.cc/YTY2-S5JG] (stating President Truman signed Public Law 762 directing construction of a second airport); John G. Norris, *More Airports for D.C. Area Recommended by CAA Chief*, WASH. POST (Oct. 21, 1947) (quoting the Civil Aeronautics Authority's (CAA's) assertion that DCA was "close to the saturation point" with over 14,000 monthly takeoffs and landings, necessitating a new airport for the DC area).

74. Kraus, *supra* note 73, at 1–2.

75. *Id.* at 1.

76. *Id.*

77. *See* Lori Aratani, *Dulles International Airport Struggles to Find its Footing*, WASH. POST (Nov. 27, 2014), https://www.washingtonpost.com/local/trafficandcommuting/dulles-international-airport-struggles-to-find-its-footing/2014/11/27/2d7b9d80-66c9-11e4-836c-

underutilized in comparison to National, seeing just a fraction of the passenger traffic; in 1975, 11.7 million passengers used DCA while just 2.5 million passengers flew through IAD.[78]

The Great Recession saw Dulles slip relative to National; airlines shifted 200,000 seats from IAD to DCA between 2011 and 2013, perhaps suggesting demand at Dulles is primarily driven by shortages at National.[79] That movement away from Dulles generated an increase in costs for those flights that did remain; in 2014, IAD was forced to charge airlines higher fees than any other airport in the nation.[80] Financial concerns stemming from that dearth of passengers at Dulles spurred MWAA to ink an agreement permitting revenue sharing between the two airports in the mid-2010s.[81]

Since then, Dulles has prospered. Long derided for its inaccessibility to the District proper, IAD finally gained a link to Metro with the belated completion of a $3 billion extension to the Silver Line in November 2022.[82] Perhaps due in part to the Silver Line, Dulles saw record traffic in 2024, handling 27.25 million passengers and beating its previous high of 27.05 million from 2005.[83] MWAA is also constructing a new concourse at Dulles, which

---

83bc4f26eb67_story.html [https://perma.cc/84PA-VQ3D] (showing National is fourteen times larger than Dulles); *Airport Overview*, METRO. WASH. AIRPORTS AUTH., https://www.flydulles.com/airport-overview [https://perma.cc/3698-RKU6] (last visited Aug. 28, 2025) (stating there are four runways at Dulles).

78. Sudip Bose, *How Dulles Airport Brought Us into the Jet Age*, WASHINGTONIAN (Dec. 12, 2011), https://www.washingtonian.com/2011/12/12/how-dulles-airport-brought-us-into-the-jet-age/ [https://perma.cc/R3NS-2W9V].

79. *See* Aratani, *supra* note 77.

80. Metro. Wash. Airports Auth., *Perimeter Rule Fact Sheet*, https://www.mwaa.com/sites/mwaa.com/files/2024-05/perimeter_rule_factsheet_2024-05-01.pdf [https://perma.cc/N2UX-SCLF] (last visited Oct. 1, 2025).

81. *See* Aratani, *supra* note 77.

82. *See generally* Justin George, *Silver Line Gives Metro, Dulles Airport Optimism for New Passengers*, WASH. POST (Nov. 2, 2022), https://www.washingtonpost.com/transportation/2022/11/02/metro-silver-line-dulles/ [https://perma.cc/S7B6-RX8P] (discussing the addition of a Metro stop at Dulles four years behind schedule and after decades of construction); *see also* Justin George, *Dulles Metro Station Used by 1 Million Passengers Since Opening*, WASH. POST (Oct. 5, 2023), https://www.washingtonpost.com/transportation/2023/10/04/dulles-airport-metro-station/ [https://perma.cc/6SGJ-QVTD] (detailing MWAA's success in attracting new passenger traffic to Dulles after Metro's arrival). Recall that National had been linked to Metro in 1977, a full forty-five years before Dulles was. *See supra* note 58 and accompanying text.

83. *See* METRO. WASH. AIRPORTS AUTH., *supra* note 10 (crediting the recent arrival of six new airlines and an 11% uptick in international traffic); Press Release, Metro. Wash. Airports Auth., Washington Airports Served 41.5 Million Passengers in 2006 (Feb. 7, 2007), https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/013000/0134

will add fourteen gates and increase the airport's domestic and international capacity.[84] Dulles is, as of January 2025, one of the top ten airports in the world for on-time flights.[85]

Air travelers' third option is Baltimore/Washington International Thurgood Marshall Airport (BWI), run by the Maryland Department of Transportation rather than the MWAA.[86] BWI is not served by Metro, but is easily accessible from the District by bus or train.[87] Baltimore is known for being cheaper than both Dulles and, especially, National; the airport charges airlines fewer fees than its competitors, and a larger share of its passengers cited cheaper airfare as a reason for flying via BWI.[88]

Location is by far the biggest factor passengers use in determining which of the three airports to fly through: 46% reported that the number one reason for their choice of airport was whichever one was closest to them.[89] All three airports have seen a decrease in business relative to nonbusiness traffic; business travelers currently comprise 38% of passengers at National but only 25% at BWI and 24% at IAD.[90] Notably, National already services the highest proportion of nonresidents of any of the DC area's three airports; just a

---

69/unrestricted/20110285e-003.pdf [https://perma.cc/GT8B-782R] (noting that 2005's record traffic at Dulles was largely driven by competition inspired by a low-cost airline—Independence Air—which had its hub at the airport before it shuttered in January 2006).

84. Felice C. Smith, *Minutes of the Board of Directors Meeting: January 15, 2025*, METRO. WASH. AIRPORTS AUTH. 7 (Jan. 15, 2025), https://www.mwaa.com/sites/mwaa.com/files/Tab%2013.1%20%20Approval%20of%20the%20Minutes%20of%20the%20January%2015%2C%202025%20Board%20of%20Directors%20Meeting.pdf [https://perma.cc/YTT3-UBYP].

85. *Id.* at 8.

86. *BWI Timeline*, BALT./WASH. INT'L THURGOOD MARSHALL AIRPORT, https://bwiairport.com/flying-with-us/about-bwi/bwi-timeline/ [https://perma.cc/U9LE-T7JA] (last visited July 17, 2025).

87. *Transit*, BALT./WASH. INT'L THURGOOD MARSHALL AIRPORT, https://bwiairport.com/to-from-bwi/transportation/transit/ [https://perma.cc/T3GQ-RVU3] (last visited July 17, 2025).

88. *See* Clara Longo de Freitas, *BWI Sees Increase in Passengers this Summer, Becomes Busiest Airport in the Region*, BALT. BANNER (Aug. 13, 2024, 4:19 PM), https://www.thebaltimorebanner.com/culture/travel/bwi-airport-passenger-increase-Y4D74RQFTZCV3MMTKLRID42FLE/ [https://perma.cc/QC7V-W24G] (noting that Baltimore/Washington International Thurgood Marshall Airport's (BWI's) cost per enplanement is the lowest of airports in the entire U.S. Northeast); *Air Passenger Survey*, *supra* note 63, at 42–44 (reporting that 15% of passengers at BWI chose the airport for its "less expensive airfare," compared to 13% at IAD and just 7% at DCA).

89. *See Air Passenger Survey*, *supra* note 63, at 41.

90. *See id.* at 21–23 (categorizing corporate, government, and military travel as "business" and vacation, personal, academic, and other travel as "non-business").

third of DCA's passengers are from the region, compared to 47% at BWI and 54% at Dulles.[91] Despite National's far smaller footprint in terms of runways and terminal size, all three airports handle virtually identical percentages of the DC area's annual passenger traffic.[92]

C. Advocates & Opponents of Rule Changes at National Airport

Owing to its history of direct control of National and Dulles, as well as its members' unceasing need to travel to and from their constituencies, Congress has long taken a keen interest in the District's airports.[93] For example, the legislative push to spin off National and Dulles from federal control necessitated a promise to congressmembers that they would keep their free, reserved parking spots at both airports.[94]

Supporters of expansion of the slot and perimeter rules include legislators and airlines alike.[95] Congressmembers from states situated beyond the perimeter have been vocal in their support for exemptions for their states,[96] as have members representing Georgia and Utah, both home to major Delta Air Lines hubs.[97] At the time of the passage of the FAA Reauthorization Act

---

91. *Id.* at 19.

92. *Id.* at 3 (of the 38.2 million passengers who originated at or connected through the three DC-area airports in 2023, 34% used BWI, 33% used DCA, and 32% used IAD).

93. *See, e.g.*, Feaver, *supra* note 59 (noting complaints about missed flights and lost luggage at DCA made by legislators directly to the Secretary of Transportation); Justin Klawans, *Congress Is Angry Over Flights at a Washington, DC, Airport*, THE WEEK (May 17, 2024), https://theweek.com/politics/congress-flights-airport-ronald-reagan-washington [https://perma.cc/H97N-YNL5] (highlighting congressional feuds over flights to and from DCA).

94. Feaver, *supra* note 59 (quoting the head of the new regional commission's belief that guaranteeing the parking spots "was a cheap price to pay for what we needed to do").

95. *See infra* notes 96–100 and accompanying text.

96. *See, e.g.*, Press Release, Senate Comm. on Com., Sci., & Transp., Sen. Cruz Applauds Senate Passage of the Bipartisan FAA Reauthorization Act of 2024 (May 9, 2024), https://www.commerce.senate.gov/2024/5/sen-cruz-applauds-senate-passage-of-the-bipartisan-faa-reauthorization-act-of-2024 [https://perma.cc/7J4G-8SXY].

97. *See, e.g.*, Press Release, Sen. Raphael Warnock, Senator Reverend Warnock Leads Bipartisan Effort to Refute Misleading Safety Concerns Surrounding Additional DCA Slots (May 3, 2024), https://www.warnock.senate.gov/newsroom/press-releases/senator-reverend-warnock-leads-bipartisan-effort-to-refute-misleading-safety-concerns-surrounding-additional-dca-slots/ [https://perma.cc/EW4C-Z4E2] (quoting Sen. Warnock) ("*[T]here is no evidence to support that any near-miss incident at DCA has ever been a byproduct of an overburdened airport.*"); *see also* Oriana Pawlyk, *Scrap Over Expanded Flights at Reagan National Bedevils Big Aviation Bill*, POLITICO (Apr. 30, 2024, 4:44 PM), https://www.politico.com/news/2024/04/30/expanded-flights-reagan-national-airport-00155212 [https://perma.cc/WZ6D-7R3A] (noting the division between major airlines that support and districts "who want more convenient

of 2024, the chairs of the responsible House and Senate committees were from Missouri, Texas, and Washington—all states partially or wholly outside the DCA perimeter.[98] Delta does not have a hub at any of Washington, DC's three airports and has been one of the most strident industry voices opposing the perimeter rule, going so far as to send pilots, flight attendants, and maintenance technicians to Capitol Hill to lobby against it.[99] And Breeze Airways, which began commercial flights in 2021 as a low-cost alternative to more established carriers, decried the FAA Reauthorization Act of 2024 as inequitable because it bars airlines without a prior presence at National from applying for the new slot exemptions.[100]

Opponents of more slot exemptions and an expanded perimeter rule, including MWAA itself, counter that the airport is already overburdened (especially in comparison to the underutilized Dulles) and cannot handle further expansion.[101] The FAA analyzed operations at DCA and advised that any new beyond-perimeter flights should be balanced out by a corresponding subtraction from the number of within-perimeter flights.[102] The FAA concluded that a lack of capacity both inside the terminal and on the airport's runways, rather than the perimeter rule in and of itself, was the culprit for delays at the airport.[103] American Airlines (which has a major hub at National), United Airlines (which has a major hub at Dulles), and Alaska Airlines (which partners with American) released a joint statement at the outset of attempts to pass the FAA Reauthorization Act of 2024 condemning any attempts to amend the existing slot and perimeter rules.[104] American and

---

travel options back home").

98. *See* Pawlyk, *supra* note 97.

99. *See Delta Employees Advocate for Modernizing the DCA Perimeter on Capitol Hill*, DELTA AIR LINES (June 22, 2023) [hereinafter Delta Employees Advocate for Modernization], https://www.deltatakingaction.com/content/deltaactions/en/news/2023/jun/delta-employees-advocate-modernizing-dca-perimeter-capitol-hill.html [https://perma.cc/V6JB-JRSX].

100. Caleb Revill, *Which Airlines Are Eyeing New Service From Washington-DCA*, AIRLINEGEEKS.COM (July 10, 2024), https://airlinegeeks.com/2024/07/10/which-airlines-are-eyeing-new-service-from-washington-dca/ [https://perma.cc/YDH2-LVNU] (highlighting the "unfair and anti-competitive nature of the [2024 reauthorization] that excludes Breeze from applying for the new DCA slots").

101. *See* METRO. WASH. AIRPORTS AUTH., *supra* note 70 (stating that DCA is "just too small to fit all of the flights that airlines want").

102. *See* DCA AIR SERVICE ANALYSIS, *supra* note 13.

103. *See id.*; METRO. WASH. AIRPORTS AUTH., *supra* note 70 ("[O]verutilization of DCA can be seen in its crowded terminals and gate areas, overtaxed baggage facilities, gridlocked roadways and often-full parking lots.").

104. Alex Daugherty, *American, Alaska join United to oppose slot expansion*, POLITICO (June 15, 2023, 10:36 AM), https://subscriber.politicopro.com/article/2023/06/american-alaska-

Alaska jointly possess over half of the awarded beyond-perimeter slot exemptions.[105] Lastly, legislators representing the District of Columbia, Virginia, and Maryland oppose additional flights at National, citing both the grave safety and overcrowding concerns overlooked in the name of congressional self-interest and the more prosaic complaints of their constituents regarding aircraft noise at DCA.[106] Aircraft noise at National has been strictly regulated and penalized by the FAA since the 1980s; however, residential complaints about aircraft noise are typically the result of a vocal minority.[107]

Advocates for expansion at National often suggest a need for the capital city's airport to directly reach as many cities as possible—ignoring, of course, that Dulles already serves exactly that purpose.[108] However, the same major markets tend to repeatedly receive perimeter exemptions; of the five cities granted flights under the 2024 exemptions, only two of them lacked an existing nonstop flight to National.[109] The 2024 perimeter exemptions statutorily

---

join-united-to-oppose-slot-expansion-00102137 [https://perma.cc/77PZ-XC7W].

105. U.S. DEP'T OF TRANSP., Order 2024-10-11 (Oct. 16, 2024).

106. *Compare* Letter from Rep. Don Beyer, et al., to Chairman Sam Graves and Ranking Member Rick Larsen, H. Comm. on Transp. 2 (May 23, 2023), https://beyer.house.gov/uploadedfiles/slotperimeterletter_2023.pdf (criticizing the addition of more flights for the "personal convenience of a comparatively small number of powerful and well-connected individuals"), *with* Press Release, Del. Eleanor Holmes Norton, After Norton Request, GAO Adds Reagan National Airport to Metroplex Noise Study (Sept. 2, 2020), https://norton.house.gov/media-center/press-releases/after-norton-request-gao-adds-reagan-national-airport-to-metroplex-noise [https://perma.cc/P9UQ-XXHZ] (praising the FAA's decision to study noise levels at DCA).

107. *See DCA Reagan National - Nighttime Noise Rule*, REAGAN NAT'L, https://www.flyreagan.com/about-airport/aircraft-noise-information/dca-reagan-national-nighttime-noise-rule [https://perma.cc/7FFY-MRHA] (last visited Sept. 4, 2025) (describing the DCA Nighttime Noise Rule that imposed fines for violating noise limits during certain hours); ELI DOURADO & RAYMOND RUSSELL, MERCATUS CTR., GEO. MASON UNIV., AIRPORT NOISE NIMBYISM 2 (2016) (analyzing airport hotline data to demonstrate that "a very small number of people account for a disproportionately high share of the total number of noise complaints," including a two-person household that alone accounted for 78% of noise complaints—a whopping 19 calls every day on average—made to National Airport in the preceding calendar year).

108. *See, e.g.*, Delta Air Lines, *supra* note 99 (blasting the perimeter at DCA as "an outdated rule that is stifling competition for consumers" and claiming flyers lose hundreds of millions of dollars paying for layovers en route to DCA); Sarah Vogelsong, *Why Groups Are Fighting Over Obscure 1970s-Era 'Slot and Perimeter' Rules at DCA*, MD. MATTERS (June 6, 2023, 8:01 AM), https://marylandmatters.org/2023/06/06/why-groups-are-fighting-over-obscure-1960s-era-slot-and-perimeter-rules-at-dca/ [https://perma.cc/K7DK-MC96] (forecasting that up to one million more passengers annually would be able to access non-stop flights to National if the perimeter rule were scrapped).

109. *See* U.S. DEP'T OF TRANSP., *supra* note 21, at 1–2 (granting exemptions to San

excluded airlines without an existing presence at DCA, and were awarded to some markets with existing nonstop flights, despite additional applications from airlines to serve cities without such service.[110] From 2000 until 2024, just ten cities received the twenty-one round-trip exemptions created to the perimeter rule, partially because airlines often bid to serve major cities where they already have sizable hubs.[111] In 2023, four of the ten busiest "origin & destination" airport pairs without a nonstop flight between them included DCA, yet airlines only applied to serve two of these four.[112] Moreover, DCA already handily surpasses BWI in the number of nonstop destinations each serves, a trend that has only increased since the pandemic.[113]

Congressional pressure can also push airlines to add new service within the perimeter: Senator Jerry Moran of Kansas played a pivotal role in pushing American Airlines to add the nonstop route between Wichita, Kansas and Washington, DC that would become Flight 5342.[114] Senator Moran

---

Antonio, Texas, and San Diego, California, which were previously bereft of nonstops to DCA, and additionally to Las Vegas, Nevada; San Francisco, California; and Seattle, Washington); U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-176, REAGAN NATIONAL AIRPORT: INFORMATION ON EFFECTS OF FEDERAL STATUTE LIMITING LONG-DISTANCE FLIGHTS 10 (2020) (mapping beyond-perimeter slot exemptions granted as of 2020 to Austin, Texas; Denver, Colorado; Las Vegas, Nevada; Los Angeles, California; Phoenix, Arizona; Portland, Oregon; Salt Lake City, Utah; San Francisco, California; San Juan, Puerto Rico; and Seattle, Washington).

110. *See* U.S. DEP'T OF TRANSP., *supra* note 21, at 3–4 (denying exemptions to Spirit and Frontier, despite applications by both and Spirit's past presence at National, on account of the Department of Transportation's reading of the text of the FAA Reauthorization Act of 2024 as disqualifying both airlines; Spirit had proposed to serve San Jose, California, which lacks nonstop service to National).

111. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-176, at 10; REAGAN NAT'L, *supra* note 5.

112. "Origin and destination traffic," or "O&D" as it is known in aviation circles, refers to all passenger traffic between two given airports, whether nonstop or with one or more layovers. *See* U.S. DEP'T OF TRANSP., *supra* note 21, at 7; Application of American Airlines, Inc., Docket DOT-OST-2024-0065-5784, Exhibit AA-6 (July 8, 2024), https://downloads.regulations.gov/DOT-OST-2024-0065-5784/attachment_1.pdf [https://perma.cc/4G6C-XQ94] (reporting that routes from DCA to Albuquerque, New Mexico; Sacramento, California; San Antonio, Texas; and San Diego, California were each among the top ten).

113. *Compare* FLIGHTRADAR24, https://www.flightradar24.com/38.95,-77.08/10 [https://perma.cc/ZVQ3-78WQ] (last visited July 17, 2025) (click on each airport's icon and find "Airports Served" under the "General" tab) (listing National as currently serving 108 nonstop destinations, BWI serving 95, and IAD serving 174) *with* U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-176, at 6 (reporting that in 2019, National served 97 nonstop destinations, BWI served 95, and IAD served 144).

114. *See* Josh Kelly, *Wichita Plane Crash: What to Know About Jet's Nonstop Route Established a*

stated that he used the route often, and the entire Kansas congressional delegation boarded the maiden flight from Wichita to National in January 2024, further underscoring both the close connection between Congress and DCA as well as the security risks created by the current dysfunction at the airport.[115]

II. THE FEDERAL AVIATION ADMINISTRATION & ITS SCOPE

A. History of the Federal Aviation Administration & Its Predecessors

Federal regulation of commercial air travel began with the passage of the Air Commerce Act in May 1926, which gave the Department of Commerce control of civil aviation.[116] In the 1920s and 1930s, the sudden emergence of air travel as a speedy and viable option for the movement of people and goods quickly outpaced the ability of the industry and its pilots to create and maintain sufficient safety standards.[117] In 1938, the Civil Aeronautics Act created the Civil Aeronautics Authority, an independent agency with two parts: the Civil Aeronautics Administration (CAA) and the Civil Aeronautics Board (CAB).[118] The dual nature of the Civil Aeronautics Authority proved problematic; for example, the CAA was charged with air traffic control, but the CAB supervised safety rulemaking.[119] This divided arrangement held until June 1956, when two passenger aircraft collided above Arizona's Grand Canyon in airspace not monitored by ATCs.[120] Deadlier than any airplane accident in history to that point—all 128 passengers on the two aircraft lost

Year Ago, TOPEKA CAP.-J. (Jan. 30, 2025, 1:02 PM), https://www.cjonline.com/story/news/local/2025/01/30/wichita-plane-crash-what-to-know-about-the-year-old-nonstop-route/78050758007/ [https://perma.cc/HGX6-UXUW].

115. *See id.*

116. *See* Air Commerce Act of 1926, ch. 344, 44 Stat. 568.

117. *See* Daniel K. Bubb, *The Successes and Failures of Presidential Policy on Commercial Air Travel*, 71 J. AIR L. & COM. 653, 654–55 (2006) (explaining that pilots of this era lambasted subpar safety equipment and long working hours and were forced to coordinate takeoffs and landings among themselves 'on the fly' due to the nonexistence of centralized air traffic control).

118. *See* Civil Aeronautics Act of 1938, ch. 601, § 204, 52 Stat. 973, 983.

119. *See A Brief History of the FAA*, FED. AVIATION ADMIN., https://www.faa.gov/about/history/brief_history#origins [https://perma.cc/HN4S-7GQB] (Nov. 15, 2021) (clarifying that the "CAA retained responsibility for ATC, airman and aircraft certification, safety enforcement, and airway development [while Civil Aeronautics Board (CAB)] responsibilities included safety rulemaking, accident investigation, and economic regulation of the airlines").

120. *See id.*

their lives—the accident directly spurred the consolidation of aviation safety within a single independent agency given far more power.[121]

Two years later, the Federal Aviation Act of 1958 consolidated the functions of both the CAA and the CAB under one roof by establishing the FAA (as the Federal Aviation Agency).[122] In 1967, the FAA was subsumed into the newly created Department of Transportation and renamed the Federal Aviation Administration.[123] The CAB persisted for decades as a price regulator in the airline industry, but was finally axed in the late 1970s owing to the increasingly sclerotic nature of its oversight.[124]

ATC shortages, partially at fault in the January 2025 collision at DCA, have long been a problem for the FAA.[125] President Ronald Reagan's firing of thousands of ATCs en masse in 1981 helped incubate a nationwide shortage of qualified ATC personnel forty years later, when many ATCs of a similar age—because they were all newly hired after the strike—all chose to retire around the same time and in tandem with the COVID-19 pandemic.[126] Airline deregulation in the 1970s had suddenly injected extreme volatility into an industry that had stagnated under decades of price controls; Reagan's summary dismissal of the striking controllers only worsened the existing havoc, as their replacements needed to be quickly trained and installed in a profession already infamous for stressful conditions and a steep learning curve.[127] Following the January 2025 collision, the Department of Transportation (DOT) announced a "supercharged" initiative to hire, train, and deploy more ATCs

121. *See* Bubb, *supra* note 117, at 659–60 (praising the belated realization of DC policymakers that more than "just an oversight board" was needed); Eric Adams, *The Worst Air Disaster in American History Occurred in Broad Daylight. Why Do Similar Mistakes Keep Happening?*, POPULAR MECHANICS (Aug. 20, 2025), https://www.popularmechanics.com/flight/a65664697/the-worst-air-disaster-in-american-history-occurred-in-broad-daylight-why-do-similar-mistakes-keep-happening/ [https://perma.cc/W62W-KXX9].

122. *See* Federal Aviation Act of 1958, Pub. L. No. 85-726, §§ 201(a)(1), 301(a), 72 Stat. 731, 741, 744; FED. AVIATION ADMIN., *supra* note 119.

123. FED. AVIATION ADMIN., *supra* note 119.

124. *See* RICHARD NORTON SMITH, AN ORDINARY MAN: THE SURPRISING LIFE AND HISTORIC PRESIDENCY OF GERALD R. FORD 549 (2023) (noting that, for example, the CAB once took eight years to approve a proposed airline route and that its refusal to loosen restrictions surrounding large cargo planes almost resulted in the premature death of a then-nascent FedEx).

125. *See* Anita Hamilton, *Air-Traffic Controllers Can Make $158,000 a Year. Why There Is Still a Shortage*, BARRON'S (Feb. 3, 2025, 5:35 PM), https://www.barrons.com/articles/air-traffic-controller-salary-shortage-6989c309 [https://perma.cc/G724-75D3].

126. *See id.*

127. *See* Bubb, *supra* note 117, at 665.

across the country.[128] Even before the collision, however, the FAA under the Biden Administration was already aggressively recruiting and training new controllers; its 2024 class of recruits was one of the biggest in years.[129]

The FAA is headed by an Administrator, who as the FAA's chief executive officer, oversees the Administration's 45,000 employees and $15 billion budget.[130] The Administrator is appointed by the President, confirmed by the Senate, and reports directly to the Secretary of Transportation.[131] Today, the Administrator is vested with the responsibility to supervise America's navigable airspace[132] with safety as the paramount concern.[133] This responsibility includes the need to supervise ATC for civilian and military planes alike.[134] The Administrator is not only empowered but required to regulate on certain topics touching on aviation safety; this duty specifically includes guarding against aircraft collisions.[135]

B. FAA Regulation of Other Airports Nationwide & the "Use-It-or-Lose-It" Policy

The FAA uses "slots" to cap air traffic volumes and avoid delays at the most heavily used airports nationwide.[136] A "slot" refers to a permission,

---

128. Press Release, Fed. Aviation Admin., U.S. Transportation Secretary Sean P. Duffy Announces Air Traffic Controller Hiring Supercharge at FAA Academy (Feb. 27, 2025), https://www.faa.gov/newsroom/us-transportation-secretary-sean-p-duffy-announces-air-traffic-controller-hiring [https://perma.cc/VN79-VG3L].

129. Press Release, Fed. Aviation Admin., FAA Hits Air Traffic Controller Hiring Goal (Sept. 23, 2024), https://www.faa.gov/newsroom/faa-hits-air-traffic-controller-hiring-goal [https://perma.cc/E9UR-YW8U] (announcing the FAA met its hiring goal of 1,800 controllers for FY 2024 and hailing "the largest number of hires in nearly a decade").

130. *Administrator of the Federal Aviation Administration*, P'SHIP FOR PUB. SERV., CTR. FOR PRESIDENTIAL TRANSITION, https://presidentialtransition.org/position_description/administrator-of-the-federal-aviation-administration-2/ [https://perma.cc/3J8Q-K8ZB] (last visited July 13, 2025).

131. 49 U.S.C. § 106 (2023).

132. *See* 49 U.S.C. § 40102(a)(32) (defining "'navigable airspace'" as that "above the minimum altitudes of flight . . . including airspace needed to ensure safety in the takeoff and landing of aircraft").

133. *See* 49 U.S.C. § 40103(b)(1).

134. *Administrator of the Federal Aviation Administration*, *supra* note 130.

135. *See* 49 U.S.C. § 40103(b)(2) (providing that the Administrator "*shall* prescribe air traffic regulations" for four reasons, the last of which is "preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects" (emphasis added)).

136. *Slot Administration*, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration [https://perma.cc/F5P5-FZQF] (Mar. 27, 2023).

granted by the FAA, for a plane to take off or land; slots are tied to a specific airport, time, and date.[137] The FAA maintains a dedicated system of slots at National Airport and two of New York City's three airports: LaGuardia Airport (LGA) and John F. Kennedy International Airport (JFK).[138] Furthermore, the Administration maintains a "formal schedule review and approval" process at Chicago O'Hare International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport.[139] The latter process is not quite mandatory, but at these airports the FAA advises airlines to preclear their schedules with the Administration in order to prevent overcrowding and warns that failure to do so may result in reduced priority for slots if a slot system must ultimately be implemented.[140]

At DCA, LGA, and JFK, where slot control is mandatory, "historic slots," those that an airline has held for an extended period of time, are the main factor considered by the FAA in allocating additional slots.[141] Slots at each of these three airports are subject to an FAA rule colloquially known as "use it or lose it" which mandates that an airline use each of its slots 80% or more of the time over a two-month period—each takeoff or landing comprising "use" of one slot—or forfeit that slot entirely.[142] Use it or lose it is subject to limited exceptions: the airline does not have to meet the 80% usage threshold immediately after the slot is awarded, during periods of bankruptcy, and around certain holidays.[143] The Chief Counsel of the FAA may waive the policy provided unusual and relatively long-lasting circumstances justify it.[144]

---

137. *See supra* note 17 and accompanying text.

138. FED. AVIATION ADMIN., *supra* note 136.

139. *Id.*

140. *Slot Administration – U.S. Level 2 Airports*, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_administration_schedule_facilitation/level-2-airports [https://perma.cc/9WKV-HDZU] (Nov. 27, 2024).

141. *Slot Administration – Slot Allocation Process*, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_allocation_process [https://perma.cc/BR5R-HE76] (Apr. 24, 2020).

142. *See* 14 C.F.R. § 93.227 (2024) (applicable to DCA); Operating Limitations at New York LaGuardia Airport, 89 Fed. Reg. 41,484 (May 13, 2024) (applicable to New York LaGuardia Airport (LGA)); Operating Limitations at John F. Kennedy International Airport, 89 Fed. Reg. 41,486, 41,487 (May 13, 2024) (applicable to John F. Kennedy International Airport (JFK)).

143. *See, e.g.*, 14 C.F.R. § 93.227(l) (excepting Thanksgiving, Christmas, and New Year's Day from use it or lose it).

144. *See id.* § 93.227(j) (providing for waiver if there arises a "highly unusual and unpredictable condition which is beyond the control of the slot-holder and which exists for a period of 9 or more days").

New York City's three airports—much like National and Dulles—are operated not by the federal government but by a local entity, the Port Authority of New York and New Jersey (PANYNJ).[145] PANYNJ maintains a perimeter rule at LaGuardia, prohibiting flights longer than 1,500 miles from the airport apart from those on Saturdays and to Denver, Colorado.[146] Unlike DCA, LGA does not grant any new exemptions to its perimeter rule; Denver was only given a legacy exemption when the rule was first instituted because it was the sole city beyond the perimeter that already had flights to LaGuardia.[147] Local legislators have attempted, so far without success, to codify LGA's perimeter rule in New York law.[148] JFK, unlike LaGuardia, does not have a perimeter rule of any kind but is also slot-controlled.[149]

Due to a persistent shortage of ATCs in the New York region, where some facilities are staffed almost 40% below FAA targets,[150] the FAA has partially waived the use-it-or-lose-it policy at JFK and LGA[151] through October 2026.[152] This limited waiver was petitioned for by airline industry

145. *See Airports*, PORT AUTH. OF N.Y. & N.J., https://corpinfo.panynj.gov/airports/en/index.html [https://perma.cc/A2G9-H4GU] (last visited July 13, 2025).

146. Rachel Gow & Jonas Pearce, *On National Aviation Day, A Journey Back through PA Airport History*, PORT AUTH. OF N.Y. & N.J. (Aug. 19, 2021), https://www.panynj.gov/port-authority/en/blogs/air/on-national-aviation-day--a-journey-back-through-pa-airport-hist.html [https://perma.cc/YZ6F-YXQ9].

147. Clint Henderson, *Breaking the LGA Perimeter: What It Was Like Flying American's Boeing 737 MAX 8 to Montana*, POINTS GUY (June 10, 2025), https://thepointsguy.com/airline/american-airlines-laguardia-perimeter-rule-new-flights/ [https://perma.cc/X8BC-AT78].

148. *See, e.g.*, A912, 2023-24 Sess. (N.Y. 2023); A1401, 2025-26 Sess. (N.Y. 2025).

149. *Slot Administration – U.S. Level 3 Airports*, FED. AVIATION ADMIN., https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_administration_schedule_facilitation/level-3-airports [https://perma.cc/39Y3-JSFX] (Jan. 9, 2023).

150. Aaron Krolik, *285 of 313 Air Traffic Control Facilities Are Understaffed*, N.Y. TIMES (Jan. 31, 2025, 6:44 PM), https://www.nytimes.com/2025/01/31/business/air-traffic-controllers-understaffed.html [https://perma.cc/P889-X4XP].

151. Newark Liberty International Airport (EWR) was included in earlier iterations of this partial waiver. *See* Staffing-Related Relief Concerning Operations at Reagan National Airport, JFK I-A, LGA, and Newark-Liberty I-A, October 27, 2024, Through March 29, 2025 (Winter 2024/2025) and March 30, 2025, Through October 25, 2025 (Summer 2025), 89 Fed. Reg. 49,256, 49,258 (June 11, 2024). Personnel and communications problems endemic to EWR later resulted in the transfer of ATC responsibility for the airport from New York to Philadelphia. *See infra* notes 155-160 and accompanying text.

152. *See* Staffing-Related Relief Concerning Operations at Ronald Reagan Washington National Airport, John F. Kennedy International Airport, and LaGuardia Airport, October 26, 2025, Through March 28, 2026 (Winter 2025/2026), and March 29, 2026, Through October 24, 2026 (Summer 2026), 90 Fed. Reg. 35,360, 35,362 (July 25, 2025) (allowing airlines

organizations including Airlines For America and the International Air Transport Association (IATA).[153] The temporary relaxation of the rule has seen airlines operate 3% fewer flights into the New York region, even as they have increased the cumulative capacity of those flights by 1.2%; clearly, easing slot usage restrictions can incentivize airlines to utilize fewer, larger aircraft without sacrificing the overall availability of travel.[154]

The severity of the shortage in the New York area—and the extent to which even minimal cuts in the overall number of flights might make a difference—was underlined by the crisis at Newark Liberty International Airport (EWR) in spring 2025.[155] Newark air traffic control lost radar and communications for up to 90 seconds—four separate times in just one month.[156] Combined with runway construction at the airport, and the dire shortage of ATCs in greater New York, the FAA was forced to cap flights departing from EWR.[157] This step followed voluntary action by United Airlines, which operates over two-thirds of flights at Newark, to slash its own schedule at the airport.[158] Additionally, the FAA shifted ATC responsibility for Newark from the insufficiently-staffed New York controller facility to the Philadelphia one.[159] Even Sean Duffy, the Secretary of Transportation, counseled his wife to avoid flying into EWR.[160]

Slot regulation is used at over 200 airports globally; 43% of all airline passengers worldwide depart from a slot-controlled airport.[161] IATA, the airline

---

to return up to 10% of their allotted slots for the duration of the waiver).

153. 89 Fed. Reg. at 49,257 (listing supporting petitioners).

154. *See* Sean Cudahy, *Airlines Ask FAA to Extend New York Slot Waivers Through Late 2025*, POINTS GUY (Apr. 12, 2024), https://thepointsguy.com/news/airlines-request-faa-new-york-slot-waivers/ [https://perma.cc/44PU-E2Z8].

155. *See* David Shepardson, *FAA Delays Flights to Newark Airport After Equipment, Staffing Issues*, REUTERS (Apr. 28, 2025, 7:35 PM), https://www.reuters.com/world/us/us-faa-delaying-flights-newark-airport-after-equipment-staffing-issues-2025-04-28 [https://perma.cc/9PQD-TKQ9].

156. Joel Rose, *Disbelief, Then Fury: A Newark Air Traffic Controller Says They Saw a Crisis Coming*, NAT'L PUB. RADIO (May 22, 2025, 5:00 AM), https://www.npr.org/2025/05/22/gs1-68333/newark-air-traffic-controller-atc [https://perma.cc/53SE-CGW7].

157. *See* Karoun Demirjian and Niraj Chokshi, *F.A.A. Restricts Newark Airport Flights to 56 an Hour*, N.Y. TIMES (May 20, 2025), https://www.nytimes.com/2025/05/20/us/newark-airport-flights-cap-faa.html [https://perma.cc/6C5Z-DRUJ].

158. *Id.*

159. 90 Fed. Reg. at 35,361.

160. Rose, *supra* note 156 (clarifying that Duffy claimed he was lamenting delays at Newark, not a risk to safety for passengers there).

161. INT'L AIR TRANSP. ASS'N, WORLDWIDE AIRPORT SLOTS FACT SHEET (2024), https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet-airport-slots/

industry's primary international trade association, has developed guidance aimed at effective implementation of slot controls at airports across the globe.[162] This guidance includes recommendations that slots are allocated in a forthright manner and that such allocation equally benefits both airlines with an existing presence at an airport and airlines wishing to enter that airport.[163] IATA does endorse use it or lose it broadly, finding that the policy can encourage maximum efficiency when executed correctly; the guidance also emphasizes, however, the importance of flexibility and critiques the capricious nature of slot usage thresholds.[164]

C. The FAA & National Airport

Federal regulation specifically tailored to the airspace around the District began with a 1938 executive order (predating the completion of DCA) by President Franklin D. Roosevelt which banned civilian aircraft from a defined area roughly corresponding to the National Mall.[165] Today, the FAA defines the restricted airspace around Washington, DC pursuant to its authority to regulate the nation's "navigable airspace" under 49 U.S.C. § 40103.[166] DCA is renowned among commercial pilots for the formidable challenge presented by its sinuous approach routes, which twist and turn over the Potomac so as to skirt no-fly zones over sensitive sites such as the White House, the National Mall, and the U.S. Naval Observatory.[167]

At National Airport, the FAA's slot controls restrict the airport to forty-eight takeoffs and landings per hour between 6:00 AM and 11:59 PM.[168] Congress has created fifty-two "slot exemptions" to this rule and delegates to DOT the discretion to choose the "best qualified" airline to receive the

---

[https://perma.cc/CLC5-4XH3].

162. *Id.*

163. *See id.* (recommending, inter alia, that slots be distributed "in an open, fair, transparent, and non-discriminatory manner" and that regulators award half of all available slots to new entrants).

164. *See id.* (favoring the policy for the consistency it gives airlines and the flexibility it provides in the event of external issues but conceding that raising the percentage threshold for required slot usage marks "an arbitrary approach to force airlines to fly more regardless of demand").

165. Exec. Order No. 7,910, 3 Fed. Reg. 1,437, 1,437 (June 18, 1938).

166. *See* Washington, DC Metropolitan Area Special Flight Rules Area, 73 Fed. Reg. 76,195, 76,197 (Dec. 16, 2008).

167. *See* Osipov, *supra* note 24 (explaining that the approach to National is "highly revered by pilots who enjoy the unique challenges" that it poses: "precise management of speed and altitude, while also closely following the river to avoid prohibited airspace").

168. FED. AVIATION ADMIN., *supra* note 149.

exemption.[169] 49 U.S.C. § 41718 defines the list of factors the Secretary may use in awarding slot exemptions to a given airline.[170] The factors used vary slightly depending on whether the potential exemption is within or beyond DCA's perimeter rule, but always include increased competition and prioritization of service to smaller destinations.[171]

Thirty-two of the fifty-two slot exemptions created by Congress since 2000 have been for beyond-perimeter flights.[172] Twenty slot exemptions lie within the perimeter, mostly to small cities such as Jackson, Mississippi and Akron, Ohio.[173] Congress authorized ten of these exemptions in May 2024 alone.[174] As it currently stands, Congress has carved out enough exemptions to the perimeter rule that a majority of passengers traveling beyond the perimeter can fly nonstop to their final destination.[175]

The skies at National are uneasily shared by civilian and military traffic: since tracking began in 1988, there have been twenty-three near-miss midair collisions between passenger planes and helicopters.[176] Nor did January 2025 mark the first collision between a civilian and a military aircraft witnessed at DCA: in November 1949, an Eastern Air Lines passenger jet on final approach and a Bolivian Air Force aircraft collided in what was then the deadliest aviation accident in U.S. history.[177] Further underlining the

---

169. *See* 49 U.S.C. § 41714(d); *Slots and Exemptions*, DEP'T OF TRANSP., https://www.transportation.gov/policy/aviation-policy/competition-data-analysis/slots-exemptions [https://perma.cc/J5B3-BNZ6] (Dec. 20, 2024).

170. *See, e.g.*, 49 U.S.C. § 41718(g)(2)(E–F) (instructing the Secretary to consider which exemptions will "enhance options for nonstop travel to and from the beyond-perimeter airports" and "have a positive impact on the overall level of competition").

171. *See id.*

172. *See* DEP'T OF TRANSP., *supra* note 169.

173. *See id.*

174. *See* FAA Reauthorization Act of 2024, Pub. L. No. 118-63, § 502, 138 Stat. 1025, 1187.

175. *See* Delta Air Lines, *supra* note 99 (arguing for an end to the perimeter in part because "40% of beyond-perimeter passengers must make at least one connection" flying to or from National).

176. Casey Tolan, Majlie de Puy Kamp, Curt Devine, Haley Britzky & Oren Liebermann, *Pilots Had Reported Near-Misses with Helicopters at Reagan National Airport in the Years Before the Deadly Crash*, CNN (Jan. 31, 2025, 6:49 PM), https://www.cnn.com/2025/01/30/us/dca-plane-helicopter-crash-invs/index.html [https://perma.cc/VHV2-5MFG].

177. *See* Trevor Hughes, *DC Plane Crash has Striking Similarities to a 1949 Tragedy*, USA TODAY (Jan. 30, 2025, 1:16 PM), https://www.usatoday.com/story/news/nation/2025/01/30/american-air-lines-crash-has-striking-similarities-to-a-1949-tragedy/78053990007/ [https://perma.cc/4EB3-8L74]. All 55 civilians aboard the passenger plane died, but the Bolivian Air Force pilot survived with injuries. *Id.*

close connection between America's policymakers and National Airport, that crash claimed the lives of both a sitting congressman and a former one.[178]

In the wake of the 9/11 attacks, National was shut down for several weeks. When it reopened, especially strict security measures unique to DCA were put in place.[179] Included in these new rules was a prohibition on all general aviation.[180] Policymakers discussed shuttering the airport permanently, but ultimately, legislators craved proximity and accepted suggestions that a successful hijacking of an outbound flight was highly implausible at National.[181] These post-9/11 measures were rolled back by October 2005.[182] The reopening of the airport to general aviation, subject to stringent security preclearances by the Transportation Security Administration (TSA), attracted special scrutiny owing to the onerous and exclusive nature of the new requirements.[183]

A day after the January 2025 collision, the FAA indefinitely suspended helicopter traffic in the designated corridors closest to DCA.[184] Two weeks later, the FAA instructed ATCs to require "radar separation" between aircraft instead of the less stringent "visual separation" in use on the night of the

178. Ben Miller, *Death Over The Potomac: A Mid-Air Plane Crash Leaves D.C. Looking for Answers*, WETA: BOUNDARY STONES (last updated Feb. 21, 2025), https://boundarystones.weta.org/2021/08/17/death-over-potomac-mid-air-plane-crash-leaves-dc-looking-answers [https://perma.cc/KVL2-42LJ].

179. *See* Chad Pergram, *Reagan National Airport has bothered lawmakers for years, but quick access to power has stalled change*, FOX NEWS (Feb. 1, 2025), https://www.foxnews.com/politics/reagan-national-airport-has-bothered-lawmakers-years-quick-access-power-has-stalled-change [https://perma.cc/93PY-TGU5] (detailing post-9/11 security measures, including more air marshals, a passenger cap for each arriving aircraft, and a requirement that all passengers be seated at least thirty minutes before landing or else flights would be diverted to Dulles under military escort).

180. General aviation consists of "aviation operations not performed by scheduled commercial airlines, large air cargo companies, or the military." Tillery, *supra* note 72, at 307 n.5, 316.

181. *See* Pergram, *supra* note 179 (citing arguments that "it was nearly impossible to hijack a plane taking off and immediately send it barreling toward the Capitol. It takes a while to engineer a hijacking. There was simply not enough time to execute such a plan seconds after takeoff").

182. *See* Tillery, *supra* note 72, at 316.

183. *See id.* at 317–18 (quoting congressional fears that the new rules "limit[ed] access to National to mostly the largest and most influential general aviation operators and Fortune 500 companies").

184. Press Release, Dep't of Transp., U.S. Transportation Secretary Announces New FAA Action to Ensure Safety in Airspace (Jan. 31, 2025), https://www.transportation.gov/briefing-room/us-transportation-secretary-announces-new-faa-action-ensure-safety-airspace [https://perma.cc/FDM2-F346].

collision.[185] Additionally, all arriving and departing traffic was halted at National Airport whenever Marine One transported the President to or from the White House.[186] This policy wreaked havoc at tightly scheduled DCA, with airlines instructing pilots to carry extra fuel on National-bound flights, dozens of aircraft having to circle indefinitely over the nation's capital, and some planes even being forced to divert to Dulles or Baltimore.[187] Eleanor Holmes Norton, the District's nonvoting delegate to Congress, called for a ban on all helicopter traffic around the airport; her proposal exempted only the President, Vice President, and national emergencies.[188]

The FAA has taken further action since the March 2025 release of the NTSB's preliminary report on the collision and the conclusion NTSB's subsequent public hearings in August 2025. The Administration ordered the permanent closure of Route 4, the helicopter corridor which the Black Hawk had been traveling through at the time of the collision.[189] Additionally, the FAA formally ended the use of visual separation rules at National and mandated ADS-B Out broadcasting for U.S. military aircraft.[190]

III. CONSTITUTIONAL CLAIMS

A. The Right to Travel, Generally

There exists a general right to interstate travel embedded, among other places, in the Privileges & Immunities Clause of the Constitution.[191] This right is so foundational to the United States that it was explicitly protected

185. *See* Ian Duncan & Lori Aratani, *At National, Flights are Now Disrupted When Trump Boards Marine One*, WASH. POST, https://www.washingtonpost.com/business/2025/02/24/faa-national-crash-marine-one-delays/ [https://perma.cc/FC64-DQ47] (Feb. 24, 2025).

186. *Id.*

187. *Id.*

188. Press Release, Del. Eleanor Holmes Norton, After Deadly Mid-Air Collision Near DCA, Norton Urges DoD to Permanently Cease Helicopter Flights of Most VIPs in NCR (Feb. 25, 2025), https://norton.house.gov/media/press-releases/after-deadly-midair-collision-near-dca-norton-urges-dod-permanently-cease [https://perma.cc/8JCQ-6RY5] (opining that "the convenience of government officials should not take precedence over aviation safety").

189. Press Release, Fed. Aviation Admin., FAA Statements on Midair Collision at Reagan Washington National Airport (Aug. 8, 2025), https://www.faa.gov/newsroom/faa-statements-midair-collision-reagan-washington-national-airport [https://perma.cc/GTC8-DNTW].

190. *Id.*

191. *See* U.S. CONST., art. IV, § 2, cl. 1; Saenz v. Roe, 526 U.S. 489, 500 (1999) (breaking the right to travel into three parts: the right to enter and leave other states, the right to "be treated as a welcome visitor" in other states, and the right to equal residence in other states).

even under the Articles of Confederation, which preceded the Constitution.[192] In the aviation context, U.S. citizens also possess a "right of transit through the navigable airspace."[193]

B. No Constitutional Right to Travel into a Specific Airport

The seminal case defending the FAA's right to impose regulations restricting travel into a specific airport remains *City of Houston v. FAA*,[194] in which Houston, Texas (outside the then-current 1,000-mile perimeter rule at DCA) and American Airlines sued to block the FAA's perimeter rule.[195] The plaintiffs cited *Shapiro v. Thompson*,[196] wherein the Supreme Court invalidated Connecticut's residency requirement for welfare recipients on the grounds that preventing an influx of poorer out-of-staters was not a constitutionally valid justification for the requirement.[197] The Fifth Circuit shot down this comparison, finding that any claimed right of Texans to fly nonstop into one airport over another paled in comparison to, and did not operate similarly to, the constitutional right of the disadvantaged to seek economic opportunity in all fifty states.[198] The court further defended the FAA's perimeter rule on rational basis grounds, finding that the Administration[199] had demonstrated sufficient rational basis that the rule promoted its stated goal of encouraging passengers to utilize a then-empty Dulles instead of a jam-packed National.[200]

Dicta in *City of Houston* suggested that the constitutional right to travel might perhaps be infringed by a rule altogether prohibiting travelers

---

192. ARTICLES OF CONFEDERATION of 1781, art. IV. ("[T]he people of each state shall have free ingress and regress to and from any other state . . . .").

193. 49 U.S.C. § 40103(a)(2).

194. 679 F.2d 1184 (5th Cir. 1982).

195. *See id* at 1187.

196. 394 U.S. 618 (1969).

197. *Id.* at 629 (noting the long-recognized right that Americans must "be free to travel throughout the length and breadth of our land uninhibited").

198. *See City of Houston*, 679 F.2d at 1198 (minimizing plaintiffs' case "to the feeble claim that passengers have a constitutional right to the most convenient form of travel").

199. In 1982, the FAA still owned and operated both airports on behalf of the U.S. government. Ray Clark, *The Federal Aviation Administration's Two Airports: A David vs. Goliath Story*, METROPOLE, https://themetropole.blog/2019/02/25/the-federal-aviation-administrations-two-airports-a-david-vs-goliath-story/ [https://perma.cc/P8WK-KGK6] (last visited July 24, 2025); *see also supra* notes 66–67 and accompanying text.

200. *See City of Houston*, 679 F.2d at 1191 (seconding the FAA's statement that "one could shoot off a cannon in the Dulles terminal at midday without a chance in the world of hitting anyone . . . Dulles needs help, which the perimeter rule . . . can provide").

originating in beyond-perimeter cities from arriving via a given airport.[201] Nine years later in *Cramer v. Skinner*,[202] a plaintiff who resided in Dallas sought to challenge the Wright Amendment, which banned exactly that: it forbade air passengers arriving into Dallas Love Field (DAL) from originating in any state that did not border Texas.[203] Any passengers wishing to fly to a state beyond those touching Texas had to purchase a second, separate ticket from an airport in a state that did border Texas.[204] The Dallas resident, relying on the dicta from *City of Houston*, argued that the Wright Amendment's explicit usage of state lines to demarcate a perimeter for authorized flights from DAL—unlike the facially neutral perimeter rule upheld in that case—unconstitutionally burdened interstate travel.[205] The Fifth Circuit ruled against this interpretation and affirmed the rational basis test it used in *City of Houston*, holding that just as the FAA perimeter rule bore a legitimate connection to its stated purpose of incentivizing long-haul flights to shift to an underused Dulles, so too was the Wright Amendment justified in restricting travel at Dallas Love Field in order to consolidate traffic at the newer, better-equipped, and more spacious Dallas Fort Worth International Airport (DFW).[206] The court further relied on *City of Houston* to find that the constitutional right to travel does not bar the imposition of inconveniences on travelers; thus, since travelers from DAL were free to fly anywhere in the country on separately purchased tickets, the headache wrought by the Wright Amendment was not an unconstitutional one.[207]

C. Airport Perimeter Rules Do Not Violate the Port Preference Clause

Plaintiffs have also attempted to use the Constitution's Port Preference Clause—broadly forbidding the government from advantaging the "ports" of one state over another's—as an alternative fount from which a constitutional challenge to the perimeter rule might spring.[208] Both at DCA and at

201. *Id.* at 1192 (observing that the FAA never "attempted completely to bar travelers from distant cities from flying to National Airport. Such an attempt might well give rise to a constitutional claim").

202. 931 F.2d 1020 (5th Cir. 1991).

203. *Id.* at 1023; *see* H.R. Rep. No. 109-600, pt. 2, at 5 (2006) (indicating that the Wright Amendment and the Love Field Amendment, as it was termed in *Cramer v. Skinner*, are interchangeable names).

204. *Cramer*, 931 F.2d at 1023.

205. *Id.* at 1030.

206. *Id.* at 1031.

207. *Id.* (noting that even a traffic light at a bridge between states might constitute a constitutional violation under plaintiff's theory).

208. *See* U.S. CONST., art. I, § 9, cl. 6.

other airports, litigants challenging airport regulations have suggested that this Clause forbids the federal government from allowing certain states access to a given airport while excluding others.[209] *City of Houston* laid out a two-part test for whether a government action is acceptable under the Port Preference Clause despite causing harm to a given state's port: if the action was incident to some otherwise legitimate government act regarding commerce *or* if the detriment accrued to the port in question was more the result of an accident of geography than of intentional government preference.[210] The Fifth Circuit, looking to the legislative history of the Clause, found that it was created in response to fears that larger states might discriminate against smaller ones and thus concluded that the Clause should primarily be read as banning purposeful government preference between states, not as protecting each individual port from any and all detriment it might suffer from another port's success.[211]

In both *City of Houston* and *Cramer*, the Fifth Circuit found that airport perimeter rules did not violate the Port Preference Clause.[212] In *City of Houston*, the fact that the perimeter rule was facially neutral and did not discriminate against any specific states or their ports *per se* allowed the rule to survive review under the Port Preference Clause.[213] By way of example, the court noted that part of Louisiana was within the perimeter, part of it outside; those ports within the perimeter were not intentionally preferred by the FAA but rather close enough to National because of geographic luck.[214] And in *Cramer*, the Fifth Circuit found that the Wright Amendment only burdened interstate travel pursuant to its goal of centralizing flights at DFW, and that any burden on states that did not neighbor Texas was the result of an arbitrary quirk of geography, not an intended slight against faraway states.[215]

IV. RECOMMENDATION

A. FAA & DOT Action

The Department of Transportation and the Federal Aviation Administration should leverage their regulatory power towards reducing air traffic at

209. *See City of Houston*, 679 F.2d 1184, 1196–98 (5th Cir. 1982); *Cramer*, 931 F.2d at 1032.

210. *City of Houston*, 679 F.2d at 1197.

211. *Id.* at 1198 (noting that the Clause was inserted into the Constitution to forestall the powerful congressional delegations of larger states from intentionally advantaging their states' own cities).

212. *See supra*, notes 208–211 and accompanying text.

213. *City of Houston*, 679 F.2d at 1197–98.

214. *City of Houston*, 679 F.2d at 1198.

215. *Cramer*, 931 F.2d at 1032.

and around National Airport while increasing staffing at the airport and nationwide as quickly as possible. The tragic events of Flight 5342, and the increasing recurrence of near-misses at DCA, demonstrate all too clearly that American lives are at stake if regulators fail to act.[216]

DOT and the FAA lack unilateral power to halt beyond-perimeter slot exemptions, which may be, and frequently are, issued by Congress.[217] However, Congress grants DOT some discretion to consider factors such as competition, or lack thereof, when awarding slots to airlines and the airports they propose adding nonstop service to.[218] DOT should, to the extent possible, award any future required slot exemptions to airlines serving smaller, underserved markets in order to minimize the increase in traffic at DCA. This would help offset the historic tendency for slot exemptions to favor large cities served by legacy airlines.[219] Including in 2024, DOT has interpreted statutory language requiring some exemptions to be given to "limited incumbents" to mean that no airline currently not serving DCA may receive an exemption; however, the definition of "limited incumbent" is a broad one and may be read, as Spirit and others have argued, to include airlines (e.g., Spirit itself) which have served DCA in the past.[220]

In addition, the FAA should abandon (or at least revise) its longstanding use-it-or-lose-it rule, which incentivizes airlines to continue operating flights even at off-peak hours or seasons and thus creates unnecessary amounts of airspace congestion and ATC overuse.[221] This process would comprise informal, notice-and-comment rulemaking pursuant to § 553 of the APA.[222] An agency must explain the evidence underlying its decision to rescind an existing regulation, as the existence of the original rule theoretically represents the will of Congress as expressed through its original delegation of legislative authority to the agency.[223]

Agency revocation of regulations is subject to the same standard of judicial review as the creation of regulations.[224] Reviewing courts inquire as to

---

216. *See supra* note 176 and accompanying text.

217. *See supra* notes 16–21 and accompanying text.

218. *See supra* notes 170–171 and accompanying text.

219. *See supra* notes 108–113 and accompanying text.

220. *See* U.S. DEP'T OF TRANSP., *supra* note 21; *see also supra* note 110 and accompanying text (explaining DOT's current interpretation).

221. Slot Use and Loss, 14 C.F.R. § 93.227 (2024).

222. Administrative Procedure Act, 5 U.S.C. § 553.

223. *See* Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (requiring an agency to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'").

224. *Id.* at 42 ("While the removal of a regulation may not entail the monetary

whether an agency's rescission of a rule was so "arbitrary and capricious" as to be set aside as unlawful.[225] Courts use a four-part test to determine if an agency action was arbitrary and capricious.[226] None of these factors are present. The FAA has only relied on factors delegated to it by Congress, as Congress has explicitly charged the FAA with prioritizing safety; the recent close calls and mid-air collision at National line up squarely with the Administration's finding that air traffic should be reduced; and finally, a rescission or partial waiver of the policy at DCA is not "so implausible" given that such an arrangement is currently in force in New York.[227] Opponents of a rulemaking might cite the fourth factor—whether the agency has neglected an "important aspect" of the problem—but it is hard to imagine a factor more important than the grave safety concerns that currently exist.[228]

Furthermore, a rational connection exists between the crowded conditions at National and the rescission or reduction of slot usage thresholds, as the loosening of such requirements has previously been shown to reduce airspace congestion while preserving overall capacity and satisfying stakeholders such as airlines.[229] Traffic at DCA plummeted, even relative to the national average, during the FAA's pandemic-era waiver of this policy.[230] Moreover, in fall 2023, the policy was again relaxed in New York City to account for a nationwide shortage of ATCs.[231] That partial waiver for the New York

---

expenditures and other costs of enacting a new standard . . . the direction in which an agency chooses to move does not alter the standard of judicial review established by law.").

225. 5 U.S.C. § 706.

226. *See State Farm*, 463 U.S. at 43 (charging courts with inquiring "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").

227. *See id.*; 49 U.S.C. § 40103(b)(2); *see also supra* notes 132–135 and accompanying text.

228. *See State Farm*, 463 U.S. at 43.

229. *See supra* notes 150–154 and accompanying text.

230. *Compare* METRO. WASH. AIRPORTS AUTH., DEC. 2020 AIR TRAFFIC STAT. (2021), https://www.mwaa.com/sites/mwaa.com/files/legacyfiles/3-21_ats_5.3.21_-_external.pdf [https://perma.cc/F48R-9TMV] (reporting a 68% year-to-date drop in passenger numbers at DCA), *with* Press Release, Bureau of Transp. Stat., Dep't of Transp., Full Year 2020 and December 2020 Air Traffic Data (Mar. 11, 2021), https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data [https://perma.cc/6DVK-3X5L] (showing that the corresponding decrease nationally was 'only' 60%).

231. *See* David Shepardson, *US Extends Cuts to Minimum New York Flight Requirements Through Late 2025*, REUTERS (June 5, 2024), https://www.reuters.com/business/aerospace-defense/us-extends-cuts-minimum-new-york-flight-requirements-through-late-2025-2024-06-05/ [https://perma.cc/EM22-9R5C].

region explicitly included slots at National, but only those slots used for flights to JFK or LGA.[232] The slight easing of the rule reduced the volume of planes while slightly *increasing* capacity, as it pushed airlines to consolidate passengers onto bigger planes instead of forcing them to operate more, smaller planes to meet slot usage requirements.[233] The FAA's Chief Counsel may leverage the language of § 93.227(j) to "indefinitely suspend" the policy.[234] The FAA should end or loosen its use-it-or-lose-it requirement regarding slot usage.

The standard for judicial review is relatively low, as agencies are not required to prove to a court that the new rule is objectively superior to the old one, but only that it is statutorily allowed, justified by agency findings, and that the agency itself understands the rule to be superior.[235] Two situations complicate this general rule: first, when the factual findings of the new rule contradict those which the original rulemaking relied upon,[236] and second, when serious reliance interests are implicated in the unmaking of the original rule.[237] Neither of these situations materializes with a rescission of the use-it-or-lose-it requirement. The facts at DCA have changed since the FAA's initial promulgation of the rule: Congress has added dozens of exemptions to the original policy, straining capacity at National, and the January 2025 mid-air collision highlights a clear need for urgent reform.[238] Certainly, airlines have serious reliance interests bound up in their hard-won slots and slot exemptions. However, a rescission of the use-it-or-lose-it requirement would not force airlines to give anything up, but would merely allow them more flexibility, which IATA has advocated for generally and which U.S. airlines specifically lobbied for in New York.[239]

Typically, regulations promulgated under notice-and-comment rulemaking cannot take effect until thirty days after their publication.[240] This rule does not apply to substantive rules that "grant[] or recognize[] an exemption

---

232 90 Fed. Reg. at 35,362.

233. *See supra* notes 146–154 and accompanying text.

234. *See* 14 C.F.R. § 93.227(j) (2024).

235. *See* FCC v. Fox Television Studios, Inc., 556 U.S. 502, 515 (2009) (holding that a rulemaking survives judicial review if the agency demonstrates "that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better").

236. *Id.*

237. *See* Dep't of Homeland Sec. v. Regents of Univ. of Cal., 140 S. Ct. 1891, 1899, 1913 (2020) (holding that although agencies may act adverse to serious reliance interests, failure to *consider* those interests in rulemaking is "arbitrary and capricious" under the APA) (emphasis added); *see also* Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125–26 (2016).

238. *See supra*, Part II.C.

239. *See supra*, Part II.B.

240. 5 U.S.C. § 553(d).

or relieve a restriction," meaning that it would not prohibit the immediate waiver of current slot usage thresholds at DCA.[241] Such a waiver would indeed constitute a substantive, not procedural, rule as it modifies the rights and burdens of parties rather than merely prescribing the nature of internal agency proceedings.[242]

The FAA has already acted on some of the more granular concerns raised by the January 2025 collision, including permanently banning most helicopter traffic from the area of the collision.[243] However, this action does not address the likely culpability of overstretched air traffic control facilities at DCA. Internal FAA guidance should warn more sternly against ATCs being sent home early by supervisors; additionally, the Administration should redouble not only its efforts to increase staffing nationwide but also prioritize staffing up at National.[244]

Although the post-9/11 ban on general aviation was ultimately abandoned by the TSA owing to congressional and corporate pressure, the unequal nature of general aviation use at National and the availability of numerous smaller airports in and around DC, counsel against its continued retention.[245] The FAA retains the power to define navigable airspace; moreover, it may utilize it to restrict general aviation to subsidiary runways or less busy time slots at DCA.[246]

When awarding congressionally required slot exemptions in the future, DOT should interpret the statutorily provided factors for awarding slots to favor smaller markets and newer airlines.[247] Favoring larger markets typically served by bigger planes means more passengers and thus overcrowding, which in turn creates heightened and needless safety risks. In issuing such an interpretation, DOT must tread more carefully than it might have had to in the past. Following the Supreme Court's June 2024 decision in *Loper Bright Enterprises v. Raimondo*,[248] reviewing courts are no longer required to

241. 5 U.S.C. §§ 553(d)(1)–(3).

242. *See, e.g.*, Jafarzadeh v. Nielsen, 321 F. Supp. 3d 19, 46 (D.D.C. 2018).

243. *See supra* notes 189–190 and accompanying text.

244. *See* Kris Van Cleave, *FAA's Head of Air Traffic Retiring Early as Agency Replaces Senior Managers at Reagan National Airport*, CBS NEWS (Apr. 9, 2025, 4:27 AM), https://www.cbsnews.com/news/tim-arel-faa-air-traffic-chief-retires-faa-replacing-dca-managers [https://perma.cc/3U24-R59G].

245. *See* Tillery, *supra* note 72, at 316–17.

246. *DCA Reagan National Aircraft Procedures*, REAGAN NAT'L, https://www.flyreagan.com/about-airport/aircraft-noise-information/dca-reagan-national-aircraft-procedures [https://perma.cc/QUX2-K7ZE] (last visited July 2, 2025).

247. *See* FAA Reauthorization Act of 2024, Pub. L. No. 118–63, § 502, 138 Stat. 1028, 1187.

248. 144 S. Ct. 2244 (2024).

automatically defer to an agency's reasonable interpretation of an ambiguous statute; however, such an agency interpretation is still treated as compelling where it implicates facts within the agency's expertise.[249] Agency actions should be focused on honoring congressional intent and the dictates of *Loper Bright*, while recognizing that the 2024 FAA Reauthorization Act did not mandate or suggest that DOT must award the new slot exemptions to the largest market or airline possible.[250]

CONCLUSION

The first fatal accident involving a U.S. passenger airliner in over sixteen years illustrates the life-or-death stakes of regulatory reform at Washington National. Flights in and out of this crucial gateway routinely carry members of Congress and other VIPs, not to mention 26 million ordinary Americans each year who are equally deserving of traveling in the utmost safety.[251] Some of the responsibility—and blame—must rest with Congress, which has shoehorned too many slot exemptions into an airport which has not expanded its runways in seven decades.

Ideally, Congress would legislate to remove existing exemptions and refrain from creating more. At minimum, Congress should balance future beyond-perimeter exemptions with equal reductions in within-perimeter slots, as the GAO has suggested.[252] The 2024 Act specifically barred such 'one-for-one' trades, but an uptick in flights, which the FAA has concluded increases operational delays and safety hazards, is unjustifiable.[253]

But if Congress fails to act, DOT and the FAA must step in and exercise their discretion to protect safety. Statutorily, the FAA is empowered to regulate, with safety as its paramount concern.[254] Constitutional arguments that National must be conveniently accessible from every dot on the map have been repeatedly denied by courts, even as those same courts have upheld the existing slot and perimeter rules on rational basis grounds.

---

249. *See id.* at 2267 (reasoning that an agency's statutory interpretation "may be especially informative 'to the extent it rests on factual premises within [the agency's] expertise'") (quoting Bureau of Alcohol, Tobacco, and Firearms v. FLRA, 464 U.S. 89, 98 n.8 (1983)).

250. *Id.*

251. *See supra* note 10 and accompanying text.

252. *See generally* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 109 (discussing how "[s]everal factors—existing slot control rules; capacity at Reagan National; and potential effects on noise, other area airports, passenger, and airline competition—should be considered in any decision to modify Reagan National's perimeter rule").

253. *See id.*; DCA AIR SERVICE ANALYSIS, *supra* note 13.

254. *See* 49 U.S.C. § 106 (2023).

The attention of the traveling public, for the moment, is fixed squarely on the FAA, DOT, and Congress, and likely offers a window of political opportunity in which normally-denounced cuts to capacity at National might instead win approval. Airlines could be reluctant to publicly oppose an agency measure promulgated in the wake of such a shocking lapse in safety—and if their enthusiastic cooperation in reducing slot usage in New York is any guide, they might well be willing partners. Members of Congress, too, have a clear self-interest in avoiding further accidents at an airport most of them use on a weekly basis. Whatever the FAA might accomplish, it can attempt with a maximum of political capital and public goodwill if it acts now.