

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ATEF BANDARY,

Plaintiff - Appellant,

v.

DELTA AIR LINES, INC.,

Defendant - Appellee.

No. 24-7204

D.C. No.
5:17-cv-01065-
DSF-AS

OPINION

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted April 23, 2026
Submission Vacated May 12, 2026
Resubmitted September 23, 2026
Pasadena, California

Filed September 23, 2026

Before: Stephen A. Higginson, Jacqueline H. Nguyen, and
Daniel A. Bress, Circuit Judges.*

* The Honorable Stephen A. Higginson, United States Circuit Judge for the Court of Appeals, 5th Circuit, sitting by designation.

Opinion by Judge Nguyen;
Dissent by Judge Higginson

SUMMARY**

Aviation and Transportation Security Act / Montreal Convention

The panel affirmed the district court's summary judgment in favor of Delta Air Lines, Inc., in an action brought under the Montreal Convention by Atef Bandary.

During a domestic Delta flight, a passenger reported concerns about Bandary to flight attendants. After consulting with the aircraft's captain, the lead flight attendant approached Bandary with the intention of asking him to stay seated for the short remainder of the flight. The encounter quickly escalated into a physical altercation, and the lead flight attendant sought help from a federal law enforcement agent on board. With the lead flight attendant's assistance, the agent restrained Bandary until the plane landed.

Bandary alleged injuries caused by the restraint. The jury returned a verdict in favor of Bandary, but the district court vacated the verdict and granted summary judgment in favor of Delta, finding that Delta was immune under the Aviation and Transportation Security Act ("ATSA").

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The ATSA grants immunity against civil liability for “a voluntary disclosure [to law enforcement] of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism.” Joining two other circuits, the panel held that under the plain text and purpose of the ATSA, immunity applies both to the initial disclosure to law enforcement and to the conduct stemming from law enforcement’s decisions following such disclosure.

Applying this standard, the panel affirmed the district court’s finding that Delta was immune for any injury sustained after the flight attendants reported Bandary’s behavior to law enforcement because there was no genuine dispute of material fact as to whether Bandary’s conduct was “suspicious” to a reasonable airline employee. There was also no triable issue whether Delta was solely responsible for Bandary’s injuries or whether he was injured prior to law enforcement’s involvement. The panel held that because Delta was immune for all of Bandary’s physical injuries, he also could not recover for any of his alleged emotional injuries under the Montreal Convention.

Dissenting, Judge Higginson wrote that he would reverse the district court’s order granting summary judgment and hold that the jury’s verdict demonstrated a genuine dispute of material fact as to whether Bandary acted suspiciously.

COUNSEL

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OPINION

NGUYEN, Circuit Judge:

During a domestic flight on Delta Air Lines, Inc. (“Delta”), passenger Atef Bandary (“Bandary”) engaged in behavior that several passengers perceived as suspicious. One passenger, an off-duty pilot for another airline, reported his concerns directly to the flight attendants. The lead flight attendant, Joy Rodemoyer (“Rodemoyer”) also learned of other passenger complaints from two of her colleagues. After consulting with the aircraft’s captain, Rodemoyer

approached Bandary with the intention of asking him to stay seated for the short remainder of the flight. The encounter quickly escalated into a physical altercation, and Rodemoyer sought help from a federal law enforcement agent on board. With Rodemoyer's assistance, the agent restrained Bandary until the plane landed.

Bandary sued Delta under the Montreal Convention for alleged injuries to his wrists, neck, and shoulders caused by the restraint. Following a jury trial, Bandary prevailed with a substantial monetary verdict in his favor. The district court, however, vacated the verdict and granted summary judgment in favor of Delta, finding that Delta is immune under the Aviation and Transportation Security Act ("ATSA").

The ATSA grants an airline immunity against civil liability for "a voluntary disclosure [to law enforcement] of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism." 49 U.S.C.A. § 44941(a). Congress enacted the ATSA in part "to ensure that air carriers and their employees would not hesitate to provide the TSA with the information it needed." *Air Wis. Airlines Corp. v. Hoeper*, 571 U.S. 237, 248–49 (2014) (citation omitted).

The district court held that, under the text and purpose of the ATSA, immunity applies both to the disclosure to law enforcement and the conduct stemming from law enforcement's decisions following such disclosure. Applying the statute, the district court found that Delta is immune for any injury sustained after the flight attendants reported Bandary's behavior to law enforcement because Bandary's conduct was "suspicious" to a reasonable airline

employee. The court also found that no bodily injury occurred prior to law enforcement's involvement.

Bandary challenges the district court's interpretation of the ATSA and its application to the facts of this case. Because we conclude that the district was correct on both counts, we affirm.

I

A

On May 29, 2015, Bandary was on a Delta flight from Atlanta, Georgia, to Salt Lake City, Utah. As soon as in-flight service began, Bandary approached one of the flight attendants and asked for food to take with his HIV medication. The flight attendant told Bandary to return to his seat and wait his turn because she could only serve one person at a time. Bandary then spoke to a second flight attendant, Lucy Cook ("Cook"), who apologized for the poor service and gave him free wine and food.

During the three-and-a-half-hour flight, Bandary was frequently out of his seat—he walked up and down the aisles, peered into the first-class cabin through the mesh curtains on more than one occasion, visited his partner who was seated a few rows ahead of him, and used the bathroom several times. Bandary testified that his medication caused him to have diarrhea, and he needed frequent visits to the bathroom. During one of Bandary's bathroom visits, he took a photo of two flight attendants. Bandary stated that he did so because they were "staring at [him]" and because he intended to file a customer service complaint against them. At trial, three passengers, including an off-duty JetBlue Airlines pilot, Tim Lunzar ("Lunzar"), testified that they found Bandary's behavior concerning or suspicious. While

it is unclear how many passengers shared their concerns directly with a flight attendant, it is undisputed that Lunzar reported his concerns to the flight attendants.

Lead flight attendant Rodemoyer spoke to two of her colleagues, who reported that passengers seated in different parts of the plane were “nervous” at Bandary’s unusual behavior and frequent visits to different bathrooms. Rodemoyer contacted the captain, who relayed to her that he had checked into Bandary’s background with Delta personnel on the ground and there was nothing noteworthy. The pilots and Rodemoyer nonetheless agreed that, with only about 45 minutes left until landing, it would be a good idea to ask Bandary to remain seated for the remainder of the flight. As Rodemoyer approached Bandary in the back galley of the plane, the situation quickly escalated.

Rodemoyer testified that Bandary started screaming at her, lunged toward her, and backed her up against the wall. But Bandary said that when Rodemoyer asked him to sit down, he simply asked if he could use the restroom. According to Bandary, the flight attendants cornered him against the back of the plane, causing him to fall on his bottom.

Rodemoyer again phoned the captain, who could hear Bandary’s screaming through the phone. The captain reminded her that Special Agent Vahe (“agent Vahe”), a law enforcement officer, was on board. Rodemoyer immediately left to seek agent Vahe’s assistance, leaving Cook alone with Bandary at the back of the plane. Agent Vahe testified that when Rodemoyer asked for help, he immediately got up, placed his law enforcement badge around his neck, and walked to the back of the plane. As he approached the back, he could hear Bandary screaming. Cook stepped forward in

an attempt to put plastic handcuffs, known as “tuff cuffs” or “flex cuffs” on Bandary, and agent Vahe saw Bandary swing his hands down in an attempt “to strike [Cook].” Cook testified that Bandary struck her hand so hard that she “thought he broke it.” Bandary, however, denies that he struck or attempted to strike Cook.

Agent Vahe immediately took control of the situation. He placed himself between Cook and Bandary and held Bandary in place while Rodemoyer placed flex cuffs on him. Because the cuffs were initially too tight, agent Vahe cut the flex cuffs off Bandary’s wrists and placed a new set of cuffs on him. Agent Vahe kept Bandary cuffed for the remainder of the flight.

Bandary alleges that he suffered physical injuries, including cuts and bleeding from his wrists because of the flex cuffs and shoulder and neck pain from sitting with his hands behind his back. Bandary also alleges emotional injuries, including depression and post-traumatic stress disorder.

B

Bandary sued Delta for malicious prosecution and bodily and emotional injury under the Montreal Convention. Article 17 of the Montreal Convention allows passengers to recover for “bodily injury” sustained from an “accident” while on board the aircraft. *Phifer v. Icelandair*, 652 F.3d 1222, 1223 (9th Cir. 2011). Following a trial, the jury found that: (1) Delta was not entitled to immunity under the ATSA, (2) Delta caused Bandary to sustain bodily injury, and (3) Bandary suffered emotional distress caused by bodily injury. After accounting for contributory negligence, the jury awarded Bandary a total of \$7.2 million dollars for both bodily injury and emotional distress damages.

Delta moved for a new trial. The district court granted its motion, finding the damages excessive and contrary to the weight of the evidence. The court vacated the jury's verdict in its entirety because "the issue of damages [was] dependent on the jury's finding of liability."

Delta then moved for summary judgment, which the district court granted. The district court ruled that "[i]mplicit in immunity for making reports to law enforcement is immunity from liability for whatever law enforcement might do with those reports." And the court found that, based on the evidence presented at trial, Delta was entitled to ATSA immunity for any injury sustained after Rodemoyer disclosed Bandary's suspicious behavior to agent Vahe. According to the district court, there was "no evidence in the record to suggest that flight attendant Joy Rodemoyer contacted Vahe for any reason other than to report activity that she suspected violated laws related to passenger safety." Further, the district court found that any potential bodily injury happened after agent Vahe arrived on the scene. Specifically, Bandary "directly testified at trial that the first time any of the flight attendants touched him was when they attempted to put on the cuffs," and that the cuffs were first applied after agent Vahe intervened. The district court concluded that because ATSA immunity applies, Bandary's Montreal Convention claim necessarily fails.

II

We review a summary judgment decision de novo. *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021). Summary judgment is appropriate when, "viewing the evidence in the light most favorable to the non-movant," "there is no genuine issue of material fact." *Soc. Techs. LLC v. Apple Inc.*, 4 F.4th 811, 816 (9th Cir. 2021).

III

Under the ATSA, any airline or airline employee “who makes a voluntary disclosure of any suspicious transaction” to a federal, state, or local law enforcement authority “shall not be civilly liable to any person under any law or regulation . . . for such disclosure.” 49 U.S.C.A. § 44941(a).¹ Congress granted airlines immunity “[t]o ensure that the TSA would be informed of potential threats.” *Air Wis.*, 571 U.S. at 241 (citing 49 U.S.C.A. § 44941(a)).

A

We start, as a matter of first impression in this circuit, with determining the scope of ATSA immunity. Bandary argues that the ATSA immunizes only the initial disclosure of suspicious behavior to law enforcement, not any conduct by an airline employee that follows that disclosure. Therefore, according to Bandary, conduct by the flight attendants that caused his injuries, whether before or after agent Vahe’s involvement, falls outside of ATSA immunity.

In interpreting a statute, we begin with its plain text. *See Gonzalez v. Herrera*, 151 F.4th 1076, 1081 (9th Cir. 2025). Bandary contends that the statute’s language focuses on “disclosures” and therefore ATSA immunity is limited to defamation-type claims. For example, he cites to the ATSA’s text immunizing airlines “for such disclosure(s)” and exempting certain disclosures from ATSA immunity. Bandary’s reading of the statute is, at best, incomplete. The ATSA’s text immunizes against “any” laws, not just those

¹ The ATSA exempts “any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading,” or “any disclosure made with reckless disregard as to the truth or falsity of that disclosure.” *Id.* § 44941(b). That exemption is not an issue here.

akin to defamation. 49 U.S.C.A. § 44941(a). Thus, there is a strong textual basis to exempt from civil liability certain conduct that follows from a disclosure. *See, e.g., Coronado v. Bank Atlantic Bancorp., Inc.*, 222 F.3d 1315, 1321-1322 (11th Cir. 2000) (interpreting nearly identical language in the Annunzio-Wylie Act to apply to claims beyond defamation and explaining that “the adjective ‘any’ is not ambiguous; it has a well-established meaning and, read naturally . . . has an expansive meaning, that is, one or some indiscriminately of whatever kind” (quotation marks and citation omitted)).

Bandary’s cramped reading of the ATSA’s grant of immunity is also inconsistent with the statute’s purpose. *See Gonzalez*, 151 F.4th at 1081 (explaining that “[i]f the statute’s terms are ambiguous,” we may consider “the statute’s overall purpose to illuminate Congress’s intent” (simplified) (quoting *Ileto v. Glock, Inc.*, 565 F.3d 1126, 1133 (9th Cir. 2009)). “The ATSA shifted from airlines to the TSA the responsibility ‘for assessing and investigating possible threats to airline security.’” *Air Wis.*, 571 U.S. at 248 (citation omitted). In enacting the ATSA, “Congress wanted to ensure that air carriers and their employees would not hesitate to provide the TSA with the information it needed.” *Id.* at 249. Thus, the grant of immunity to airlines created a policy of “when in doubt, report.” *Id.* at 257 (citation omitted).

Holding an airline civilly liable for conduct flowing from its employees’ disclosure to law enforcement would chill their willingness to report and substantially defeat the purpose of the statute. *See id.* at 249 (avoiding a rule that “would restore the pre-ATSA state of affairs, in which air carriers bore the responsibility to investigate and verify potential threats”); *see also Ilczyszyn v. Sw. Airlines Co.*, 295

Cal. Rptr. 3d 533, 552–53 (2022) (holding that ATSA immunity is not limited to disclosures because “Congress intended to confer upon air carriers the greatest possible degree of protection by enacting section 44941” and “the consequences of disclosing a security threat cannot be so easily separated from the disclosure itself”). We therefore hold that, consistent with the text and purpose of the statute, ATSA immunity applies to conduct that flows from law enforcement’s decisions following a suspicious disclosure.

Our holding today is consistent with the application of ATSA immunity in two of our sister circuits. In *Baez v. JetBlue Airways Corp.*, the plaintiff made a comment about the possibility of a bomb in her luggage, and the gate agent reported the statement to law enforcement. 793 F.3d 269, 271 (2d Cir. 2015). The plaintiff was arrested and brought various claims against the airline and the gate agent, including claims for defamation, negligence, false arrest, and intentional infliction of emotional distress. *Id.* at 271–73. The Second Circuit acknowledged that the gate agent and airline were required to report any threats to law enforcement, and that “[j]udgment calls about how to act on such reports are the province of the TSA and other law enforcement officers.” *Id.* at 276. Noting that the “adverse consequences to Baez flowed from the decisions made by such law enforcement officers,” the court applied ATSA immunity to all the asserted claims against the airline and its employee—not just the defamation claim. *Id.*

The Fifth Circuit adopted this reasoning in *Abdallah v. Mesa Air Grp., Inc.*, 83 F.4th 1006 (5th Cir. 2023). Quoting *Baez*, the court held that Section 44941(a) “grants immunity for any communications made between [the airline] and external security agents—and to any impact that ‘flowed

from the decisions made by such law enforcement officers.”
Id. at 1012 (quoting *Baez*, 793 F.3d at 276).

Because the Second and Fifth Circuits’ holdings are consistent with our own reading of the ATSA’s text, we join our sister circuits and hold that ATSA immunity applies to the conduct that flowed from agent Vahe’s decisions following Delta’s suspicious disclosure.

B

Bandary argues in the alternative that, even if the ATSA covers conduct stemming from the disclosure of suspicious activity, genuine disputes exist as to whether his conduct was suspicious, whether Delta is solely responsible for his injuries, or whether he was injured prior to law enforcement’s involvement.

i

ATSA immunity applies for an airline’s “voluntary disclosure of any suspicious transaction . . . relating to air piracy, a threat to aircraft or passenger safety, or terrorism.” 49 U.S.C.A. § 44941(a). Bandary argues that whether he engaged in suspicious conduct should be assessed under an objective standard, that is, whether Bandary’s actions were suspicious to a reasonable airline employee. But by any metric, and viewing the facts in the light most favorable to Bandary, the district court correctly found that no material issues of fact exist as to whether there was a “suspicious transaction.”

Bandary continually paced the aisles, went in and out of different bathrooms, peered into the first-class cabin multiple times, took a photograph of flight attendants, and stared at passengers. Lunzar, an off-duty pilot, testified that he observed Bandary staring at passengers for twenty to

thirty seconds straight, in what he described as an expressionless “dead stare.” He observed that Bandary was constantly fidgeting, getting up from his seat, and moving around. Lunzar thought Bandary’s behavior was suspicious enough to report to the flight attendants that Bandary was acting “suspiciously and oddly, staring at customers, making them feel uncomfortable, [and] pacing around the aircraft.”

Lunzar also testified that the two women sitting next to him brought Bandary’s behavior to his attention because they were similarly concerned. One of those women testified that Bandary was “interested in making sure he knew who every single person was on the plane,” was “walking around,” and was “just staring at each individual group going up and down the aisles.” Based on her observations, she testified that Bandary looked “anxious” and “it felt like he was working up some kind of a plan.”

Rodemoyer testified that other flight attendants told her that passengers from different parts of the plane had complained that they were “nervous” about Bandary’s behavior. The situation was concerning enough that she felt the need to raise it with the captain because she believed Bandary’s behavior was “something suspect of unusual and safety related.” Bandary’s behavior when she approached him caused Rodemoyer to become concerned about her own personal safety.

Bandary argues that his conduct was not suspicious because he merely used the restroom multiple times, visited his partner who was seated a few rows ahead of him, expressed dissatisfaction with Delta’s customer service, and took a picture of flight attendants about whom he wanted to complain. Further, Bandary notes that Cook and Rodemoyer both testified at one point that they did not believe Bandary

was a suspicious passenger. Bandary contends that these facts stand in contrast to *Air Wisconsin* and *Baez*, where the plaintiffs' actions were suspicious because they involved the threat of a weapon.

But Bandary fails to show that a reasonable flight attendant, faced with the concerns expressed by numerous passengers, would have acted differently. Although Cook and Rodemoyer did not view Bandary as suspicious at certain points during their interactions with him, Cook also testified that Bandary appeared "very agitated and very upset," and was "out of control," and Rodemoyer testified that Bandary's behavior caused her to become concerned for her safety. And as the district court noted, there is no evidence that Rodemoyer contacted agent Vahe for any reason other than to report Bandary's potentially suspicious behavior. *See id.* at 248 (noting that the ATSA shifted responsibility from airlines to the TSA "for assessing and investigating possible threats to airline security" (citation omitted)).

For these reasons, the district court properly held that there was no genuine dispute of material fact as to whether Bandary's actions were suspicious within the meaning of § 44941(a).²

² The dissent cites Bandary's trial testimony concerning his various medical conditions, his status as an Egyptian immigrant, and his belief that he was racially profiled. We focus only on what was known to the flight attendants at the time they decided to seek Agent Vahe's assistance. Much of the testimony cited by the dissent is therefore irrelevant, and there is no evidence that any racial animus influenced the flight attendants' conduct. The dissent similarly references the jury's findings on whether Bandary's conduct was suspicious. Although the jury found that Delta did not make a voluntary disclosure of a suspicious transaction, the verdict was vacated by the district court. That order is

ii

Bandary raises a few other arguments. First, relying on *Abdallah*, he contends that Delta was solely responsible for his injuries. In *Abdallah*, the Fifth Circuit held that the ATSA “does not grant immunity for things that occurred solely because of the airline’s actions.” 83 F.4th at 1012–13. There, the airline decided to delay the flight after security officials found that there was no reason for concern. *Id.* at 1013. Because the decision to delay the flight was made solely by the airline, the Fifth Circuit held that the ATSA did not immunize against any damages that flowed from that decision. *Id.*

Bandary’s argument that Delta is solely responsible for his injuries is belied by the record. Agent Vahe testified that he personally surveyed the scene before making the decision to intervene, and the flight attendants were “just there to assist [him].” Agent Vahe asked for Rodemoyer’s assistance to place the flex cuffs on Bandary, and he testified that he tightened the second set of cuffs himself. Cook also testified that agent Vahe initially directed her to leave the scene when he arrived. Finally, from the moment agent Vahe intervened, Bandary “was effectively in [his] custody until [he] turned [Bandary] over to somebody else.” On this record, no evidence suggests that Delta was solely responsible for Bandary’s injuries. Accordingly, ATSA immunity applies.

not on appeal. Therefore, without an operative verdict, “the parties are left in the same situation as if no trial had ever taken place.” *United States v. Recio*, 371 F.3d 1093, 1105 n.11 (9th Cir. 2004) (quoting *United States v. Ayres*, 76 U.S. (9 Wall.) 608, 610 (1869)). Further, “to the extent that the immunity determination belongs to the court . . . a court’s deferential review of jury findings cannot substitute for its own analysis of the record.” *Air Wis.*, 571 U.S. at 250.

Second, Bandary briefly argues that, even if ATSA immunity applies after agent Vahe's involvement, he may still be able to recover for any injury that occurred before the disclosure. But Bandary conceded that he suffered no physical injury prior to agent Vahe's involvement other than a fall on his bottom.³ Accordingly, Bandary failed to show a triable question of fact on his assertion that he suffered bodily injury before agent Vahe arrived.

Because Delta is immune for all Bandary's physical injuries, Bandary also cannot recover for any of his alleged emotional injuries under the Montreal Convention. *See El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 172 (1999) (noting that Article 17 does not permit recovery of purely "psychic or psychosomatic injuries" absent "bodily injury"). Bandary cites no case in which a court has allowed a plaintiff to recover for purely emotional injuries when the airline is immune under the ATSA for all physical injuries.

AFFIRMED.

HIGGINSON, Circuit Judge, dissenting:

A jury awarded Atef Bandary \$7,225,000 for physical and emotional injuries that occurred on a Delta Air Lines flight. Delta moved for a new trial on damages, which the district court granted. The district court also vacated the judgment on liability. Delta then moved for summary judgment, which the district court granted. Bandary appealed the grant of summary judgment. I depart from my

³ Aside from his testimony in passing that his "bottom was hurt," Bandary did not provide any evidence of physical injury due to the fall on his bottom. This testimony is not sufficient to defeat summary judgment.

colleagues' well-reasoned opinion in one, determinative respect: the district court erred in granting summary judgment to Delta, as the jury's verdict demonstrates a genuine dispute of material fact as to whether Bandary acted suspiciously.

Bandary sued Delta under Article 17 of the Montreal Convention based on injuries he suffered after a report to law enforcement while he was onboard a Delta flight. As my colleagues explain in more detail, the Aviation Transportation Security Act ("ATSA") grants airlines and their employees immunity from civil liability for reporting suspicious behavior to law enforcement. *See* 49 U.S.C. § 44941. After a four-day trial, a jury concluded that Bandary had *not* acted suspiciously. Indeed, a special verdict form asked the jury the following question: "By engaging Special Agent Vahe's assistance, did Delta Air Lines make a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation relating to a threat to aircraft or passenger safety[?]" The jury answered "No." It went on to award Bandary substantial damages.

At summary judgment, a court must view the evidence in the light most favorable to the non-movant. *See Soc. Techs. LLC v. Apple Inc.*, 4 F.4th 811, 816 (9th Cir. 2021). Bandary himself testified at trial. He testified that he has numerous medical conditions: he is blind in one eye and suffers from HIV, diverticulitis, arthritis, osteoporosis, an enlarged prostate, and bowel movement syndrome. He said: "I am disabled, a senior citizen, I go to the bathroom very often, I'm HIV positive, I have a list of problems." On this flight, he told the jury, he had to use the bathroom repeatedly in part because of diarrhea caused by taking his HIV medication without adequate food. *See Abdallah v. Mesa*

Air Grp., Inc., 83 F.4th 1006, 1018 (5th Cir. 2023) (“[U]sing the restroom” alone is not “so obviously suspicious” as to foreclose a genuine dispute of fact as to suspicion.). Bandary also testified that he was an immigrant from Egypt, consistent with his name and accent, and he believed he was racially profiled by other passengers and Delta staff who reported him. The jury additionally heard that Delta’s background paperwork on Bandary came back clear.

At trial, other evidence of suspiciousness prior to Delta’s report to law enforcement required the jury to weigh the credibility of Bandary and several flight attendant witnesses. One flight attendant testified that she did not think Bandary was “acting out of line” or that he was suspicious, a terrorist, or a threat to passenger safety. She also stated that no passengers complained to her about Bandary. The jury was read another flight attendant’s deposition testimony explaining that she did not determine that Bandary was suspicious at any point during the flight. To the extent that Bandary and the flight attendants had contradictory testimony concerning whether Bandary screamed or physically threatened them, that further presents a question of fact. Although Bandary testified that he tried to retreat when one flight attendant was “violent and . . . so angry at me,” the flight attendant testified that Bandary hit one of her colleagues. Bandary and the flight attendants also disagreed on whether Bandary began screaming at a flight attendant who asked about his name. On this record, it was up to the jury to make credibility determinations and assess contradictory accounts of Bandary’s behavior.

Considering this evidence, and above all the jury’s special verdict finding *no* suspiciousness, there was at least a triable issue of fact as to whether Bandary behaved suspiciously. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 248 (1986) (“[S]ummary judgment will not lie . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party[.]” that is, for Bandary, as the jury did here). Again, a jury did not only find that Bandary’s suspicion was debatable; the jury found that Bandary had *not* behaved suspiciously.¹

I greatly respect the decision of my colleagues, but I would reverse the district court’s order granting summary judgment to Delta on Bandary’s Montreal Convention claim.

¹ Separately, I note that under 49 U.S.C. § 46504, Bandary was criminally charged with “assault[ing] and intimidat[ing] a flight attendant[.]” Bandary testified in front of that jury, too, and was acquitted after a nine-day trial.