



Written by [Michael Tennant](#) on July 6, 2010

ACLU Tries to Ground No-Fly List

Once in a while the American Civil Liberties Union (ACLU) gets something right. Case in point: the ACLU's lawsuit challenging the federal no-fly list.

According to an [ABC News report](#), the ACLU is suing on behalf of 10 plaintiffs and has named Attorney General Eric H. Holder, Jr., FBI Director Robert S. Mueller III, and Terrorist Screening Center Director Timothy J. Healy as defendants in the suit.

The ACLU contends that the "Constitution does not permit such a fundamental deprivation of rights to be carried out under a veil of secrecy and in the absence of even rudimentary process." It's right there in the Fifth Amendment: "No person shall ... be deprived of life, liberty, or property, without due process of law."



The no-fly list, of course, is kept secret. Individuals are placed on the list on a seemingly arbitrary basis, whether as a result of anonymous tips or because they have a name similar to one used by a terrorist. The latter caused the late Senator Edward Kennedy significant [difficulties in boarding planes](#) back in 2004.

In congressional testimony Healy admitted that the process by which someone ends up on the no-fly list is fairly arbitrary, saying, "these people are identified by fragments of information. They're identified by a source saying, 'this guy's involved in it.' So it's not a black and white system." This is a direct violation of not just the Fifth Amendment but also the Sixth Amendment, which guarantees an accused person the right "to be confronted with the witnesses against him."

"Prior to the Christmas day bombing attempt of an American passenger plane [sic], U.S. officials said there were approximately 4,000 individuals on the no-fly list," reports ABC News. "That number is now believed to be nearly 8,000." Are there really twice as many people now likely to use airplanes for terrorism as there were six months ago?

While there is a formal complaint process to get one's name removed from the list, it seems seldom to work as advertised. Recently a [six-year-old Ohio girl](#) tried to get her name removed from the list only to be rebuffed by the Department of Homeland Security; only when the local Fox TV station took up the case was she finally removed from the list. Senator Kennedy himself spent three weeks appealing directly to then-Homeland Security Secretary Tom Ridge to get his own name off the list — something that no ordinary citizen could even hope to do.

The ABC News report tells the story of one of the plaintiffs in the ACLU's case, Steve Washburn, a 55-year-old former U.S. Air Force officer who was stuck in Ireland for three months because his name appeared on the no-fly list all of a sudden. (He had, after all, been permitted to fly to Ireland not long



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before.) After being denied a seat on a flight from Dublin back to the United States, Washburn “contacted the FBI who told him they had no concerns about him and even suggested Washburn get around the no fly list by flying to Mexico then walking across the border,” Washburn told ABC News.

The story continues:

Washburn says he took their advice and boarded a flight to Mexico. However his wife — a Spanish citizen with a visa — was not permitted to fly with him although she was told she is not on a no fly list.

Three hours into his flight, the pilot was ordered to return to London Heathrow Airport where Washburn was detained, fingerprinted and tested for DNA by Scotland Yard officials. Washburn said he learned the plane was forced to return because it would briefly enter U.S. airspace, triggering the no fly list restriction.

Washburn, a Muslim convert, said he has never committed a crime and served honorably in the Air Force and at NORAD. He finally made it to the U.S. last month after a carefully scripted 72 hour journey through Germany, Brazil, Peru and Mexico to avoid U.S. airspace. He was detained and questioned overnight in Mexico by officers.

Once in El Paso, Texas, Washburn said he was held at U.S. Customs for seven hours and was handcuffed to a chair while they asked him questions that previous FBI agents had asked and he had answered.

“You feel abused and you get angry because you’re thinking, ‘This is injustice,’” he said. “No one will tell you why or how you got on the list. Growing up in America we’re taught the great American system in that you’re innocent until proven guilty.”

That “great American system” has long been reversing itself so that people are presumed guilty until proven innocent, but the reversal took a great leap forward after 9/11. The no-fly list is just one part of it, but it is the part most likely to affect a broad swath of the public — unlike, for example, the President’s claim to be able to assassinate American citizens whom he suspects of being terrorists, which has only been used (as far as the public knows) against a small number of people for whom most Americans have little sympathy.

The ACLU is right to take up the fight against the no-fly list. Such an egregious assault on the Constitution and the rule of law should never have been allowed to fly in American airspace in the first place. It is long past time to shoot it down.



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