



Written by [Joe Wolverton, II, J.D.](#) on July 1, 2014

Federal Court Declares No-fly List Unconstitutional

An Oregon federal judge ruled June 24 that 13 Muslim Americans who challenged the federal government's no-fly list in a lawsuit were denied a constitutional right to travel. Additionally, the court found that the plaintiffs had no way of challenging their inclusion on the list.

This is the first time that a federal court has ruled that the government's mandated procedure for appealing inclusion on the no-fly list is unconstitutional.



The experience of the 13 Muslims who brought the complaint against the federal government serves as a cautionary tale for all Americans who have found or will find themselves blacklisted in one way or another by an increasingly intolerant federal authority.

According to a report issued by the FBI last year, there are 20,000 names on the no-fly list, and 500 of those people are American citizens. That agency has become adept at using one's presence on that list as a way of coercing him to join the amateur domestic spying corps by snooping on members of a community and reporting back to the bureau.

The Stasi would be very proud.

As you read the following account of the mistreatment of the complainants provided by the American Civil Liberties Union (ACLU), remember that when a government is permitted to persecute the members of one religious group, they will sooner or later assert that same authority over other faiths when they feel justified.

The ACLU reports:

FBI agents put this pressure on ACLU clients Abe Mashal, a Marine veteran; Amir Meshal; and Nagib Ali Ghaleb. Each of these Americans spoke to FBI agents to learn why they were suddenly banned from flying and to clear up the errors that led to that decision. Instead of providing that explanation or opportunity, FBI agents offered to help them get off the No-Fly List—but only in exchange for serving as informants in their communities. Our clients refused.

The ACLU's report, *Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority*, explains what happened to Nagib Ali Ghaleb. Nagib was denied boarding when trying to fly home to San Francisco after a trip to visit family in Yemen. Stranded abroad and desperate to return home, Nagib sought help from the U.S. embassy in Yemen and was asked to submit to an FBI interview. FBI agents offered to arrange for Nagib to fly back immediately to the United States if he would agree to tell the agents who the "bad guys" were in Yemen and San Francisco. The agents insisted that Nagib could provide the names of people from his mosque and the San Francisco Yemeni community. The agents said they would have Nagib arrested and jailed in Yemen if he did not cooperate, and that Nagib should "think about it." Nagib, however, did not know any "bad guys" and therefore refused to spy on innocent people in exchange for a flight home.



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Nagib's experience is far from unique. After Abe Mashal was denied boarding at Chicago's Midway Airport, FBI agents questioned him about his religious beliefs and practices. The agents told Abe that if he would serve as an informant for the FBI, his name would be removed from the No-Fly List and he would receive compensation. When Abe refused, the FBI promptly ended the meeting.

Is it so difficult to imagine a day in the near future where armed federal agents grab and interrogate a passenger, questioning him about whether he owns weapons or has stored large supplies of food?

Americans wary of the daily descent into despotism will not abide the harassment of Muslims or regard it as necessary for national security. We recognize that the tenets of Christianity are under constant barrage from the federal government and any power we permit to be unconstitutionally exercised against an unpopular religion could soon be applied to a religion increasingly unpopular in the circles of political power.

Besides, this banning of listed people from air travel serves to separate families, prevent people from performing necessary work obligations, and a myriad other important personal purposes. That speaks nothing of the fact that anyone denied boarding a plane because of the no-fly list is branded as a terrorist and painfully and permanently suffers that stigma.

For its part, the Obama administration argued that people who are denied airline travel on account of their appearance on the no-fly list have not suffered any deprivation as they are free to travel by another mode.

U.S. District Court Judge Anna Brown in Portland did not agree. She found that the right to travel overseas is included in the right to "life, liberty, and pursuit of happiness" that our Founders declared unalienable. Brown wrote in her June 24 decision:

One need not look beyond the hardships suffered by Plaintiffs to understand the significance of the deprivation of the right to travel internationally. Due to the major burden imposed by inclusion on the No-Fly List, Plaintiffs have suffered significantly including long-term separation from spouses and children; the inability to access desired medical and prenatal care; the inability to pursue an education of their choosing; the inability to participate in important religious rites; loss of employment opportunities; loss of government entitlements; the inability to visit family; and the inability to attend important personal and family events such as graduations, weddings, and funerals. The Court concludes international travel is not a mere convenience or luxury in this modern world. Indeed, for many international travel is a necessary aspect of liberties sacred to members of a free society.

Later in her decision, Judge Brown held that the redress procedure "falls far short of satisfying the requirements of due process," and is "wholly ineffective."

In this age of nearly unbound autocracy, there is no right more endangered than due process. From the [drone war's delivery of death by remote control](#) to the National Defense Authorization Act's (NDAA) provisions purporting to authorize the [indefinite detention of American citizens](#), President Obama has assumed all power over life and death and created ex nihilo a new category of individual — one deprived of all rights altogether.

As Judge Brown's ruling highlights, national security is not harmed by the failure of government to create lists of people who are denied due process; it is instead the Constitution and the timeless principles of limited government upon which it is built that suffer.



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Photo: AP Images

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