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UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

RAHINAH IBRAHIM,)	CASE NO.
)	
Petitioner,)	
)	
v.)	PETITION OF RAHINAH
)	IBRAHIM FOR REVIEW OF
)	THE TRANSPORTATION
DEPARTMENT OF HOMELAND)	SECURITY ADMINISTRATION
SECURITY; MICHAEL CHERTOFF)	SECURITY DIRECTIVES
, in his official capacity as the)	ESTABLISHING THE “NO-FLY
Secretary of the Department of)	LIST”
Homeland Security; TOM RIDGE, in his)	
official capacity as the former Secretary)	
of the Department of Homeland)	
Security; TRANSPORTATION)	
SECURITY ADMINISTRATION;)	
KIP HAWLEY; in his official capacity as)	
Administrator of the Transportation)	
Security Administration; DAVID M.)	
STONE, in his official capacity as Acting)	
Administrator of the Transportation)	
Security Administration; TERRORIST)	
SCREENING CENTER; and Donna A.)	
BUCELLA, in her official capacity as)	
Director of the Terrorist Screening Center.))	
)	
<u>Respondents.</u>)	

Petitioner, Rahinah Ibrahim, hereby petitions the Court for review of the Security Directives issued by Respondent, the Transportation Security Administration, establishing the “no-fly list” and the “selectee list”, collectively referred to as the “No-Fly List”, on or about November, 2001.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this petition and venue is proper in this Court pursuant to 49 U.S.C.A. §46110, which provides the U.S Court of Appeals with jurisdiction over an “order” issued by the Transportation Security Administration, and pursuant to *Green v. Transportation Security Administration* (2005) 351 F.Supp.2d 1119.

PARTIES

2. Petitioner, RAHINAH IBRAHIM, (“IBRAHIM”), is an individual, who obtained her Doctorate Degree, while in the United States on a student visa, at Stanford University, and currently resides in the country of Malaysia. IBRAHIM has no criminal record and no links to terrorist activity.

3. On information and belief, respondent, DEPARTMENT OF HOMELAND SECURITY, (“DHS”), is a department of the United States Government, created on October 8, 2001, to develop and coordinate the implementation of a comprehensive national strategy to secure the United States

from terrorist threats or attacks. It is the department ultimately responsible for the Transportation Security Administration and, in turn, the No-Fly List.

4. On information and belief, respondent, MICHAEL CHERTOFF (“CHERTOFF”), is the current Secretary and head of the Department of Homeland Security. He is sued here in his official capacity.

5. On information and belief, respondent, TOM RIDGE (“RIDGE”), is the former Secretary and head of the Department of Homeland Security. He is sued here in his official capacity.

6. On information and belief, respondent, TRANSPORTATION SECURITY ADMINISTRATION (“TSA”), is a department of the United States Government and a sub-agency of the DHS. The role of the TSA is to implement the provisions of the Aviation and Transportation Security Act (P.L. 107-71), signed by President George W. Bush on November 19, 2001. The authority to regulate airport security was transferred to the TSA from the Federal Aviation Administration on November 19, 2001, when the TSA was established.

7. On information and belief, respondent, DAVID M. STONE (“STONE”), is the Acting Administrator of the TSA, and on information and belief, is responsible for maintaining and managing the No-Fly List. He is sued here in his official capacity.

8. On information and belief, respondent, TERRORIST SCREENING CENTER (“TSC”), is a department of the United States Government. Its mission is to maintain a list of “Terrorist Identities Information” for agencies of the United States Government, including the TSA. The TSC determines who is on the list that the TSA uses to compile the No-Fly list.

9. On information and belief, respondent, DONNA A. BUCELLA (“BUCELLA”), is the Director of the TSC, and is being sued in her official capacity as such.

GENERAL ALLEGATIONS

20. Petitioner brings this petition to challenge respondents’ administration, management and implementation of the “No-Fly List”, a list circulated to commercial airlines and security personnel with instructions to detain and question any passenger whose name matches or is similar to one on the No-Fly List.

21. Respondents began implementing the No-Fly List in November, 2001. Since then, it has resulted in hundreds, if not thousands, of innocent passengers being routinely stopped, questioned, searched, and sometimes physically arrested, as in this case. Respondents, however, do not inform individuals that they have been placed on the No-Fly List or why they are on the list. Moreover, individuals which respondent determine are not security threats continue to be identified on the

No-Fly List. Passengers, therefore, have no meaningful opportunity to challenge their identification on the No-Fly List.

22. For several years before the terrorist attacks of September 11, 2001, the US Government issued directives identifying persons who were deemed to pose a threat to civil aviation. In November, 2001, the TSA was formed and assumed responsibility for compiling and administering these directives, with the assistance of the TSC. Today, respondents maintain at least two watch lists of individuals perceived to be threats to aviation security. The “no-fly” list contains names of people which airlines are prohibited from transporting. The “selectee” list contains names of passengers who must go through additional security screening before boarding an aircraft. These two lists collectively are referred to as the “No-Fly List.” On information and belief, the No-Fly List contains thousands of names, primarily names of individuals of Muslim or Middle Eastern descent.

23. Until November, 2002, respondents denied the existence of the No-Fly List. Until today, respondents have refused to disclose important information regarding the No-Fly List, including the criteria for placing names on or removing names from the No-Fly List, procedures for amending information on the List such as when it is determined that an individual is not a security threat, or rules for maintaining or managing the List. Because respondents have refused to provide

any of this information, respondents may be using race, religion, ethnicity, national origin, or the exercise of First Amendment protected rights as factors in maintenance and implementation of the No-Fly List.

24. On information and belief, respondents occasionally disseminate updated versions of the No-Fly List as attachments to security directives and emergency amendments to commercial airlines in the United States. The 15 domestic airlines have almost half a million employees and, on information and belief, a substantial percentage of these employees have access to the No-Fly List. On information and belief, these security directives and the No-Fly List are also provided to customs and immigration agents, airport security, and law enforcement agencies. Moreover, information from the No-Fly List is inputted into other security databases such as the FBI and the FAA. On information and belief, respondents, TSA and DHS, and the heads of their departments, instruct recipients of the No-Fly List to detain and interrogate any individual who checks in for a flight whose name is similar or identical to a name on the No-Fly List. Even if the passenger's actual identity is verified, a boarding pass is issued which is stamped with a mark to indicate the passenger must be subjected to enhanced screening, also referred to as "secondary screening."

25. Innocent passengers subjected to this treatment are stigmatized, humiliated, and subjected to interrogations, delays, enhanced searches, detentions,

travel impediments, and sometimes actual physical arrest without a warrant or any probable cause. This treatment is completely unexpected as they have no notice that they have been placed on the No-Fly List.

26. Petitioner, IBRAHIM, was subjected to this humiliating treatment on January 2, 2005, at the SFO, while traveling to Malaysia, through an initial stop in Hawaii.

27. IBRAHIM is a citizen of Malaysia. She is a Muslim woman who is clearly identifiable as Muslim as she wears a head scarf, also known as a “hijab.” IBRAHIM has no criminal record and no ties whatsoever to any terrorist activity. At the time of the incident, IBRAHIM was a student at Stanford University, studying to obtain her Doctorate Degree (PhD), and lawfully in the United States on a student visa. IBRAHIM’s student visa was valid from September 26, 2001 to January 11, 2007. She was preparing her thesis on affordable housing and on January 2, 2005, IBRAHIM was scheduled to fly to Kuala Lumpur, Malaysia, with a changing flight in Hawaii, to present her research findings at a conference sponsored by Stanford University. She was scheduled to return to Stanford in March, 2005, to submit her dissertation and complete her PhD.

28. Prior to her trip, in October, 2004, IBRAHIM had a hysterectomy surgery at Stanford University Medical Hospital, with an extremely invasive abdominal approach. IBRAHIM suffered severe complications from her surgery

which extended her recovery period for months. IBRAHIM also suffered back and abdominal pain from her surgery and was regularly taking medication for these complications.

29. On January 2, 2005, at approximately 7:00 a.m., IBRAHIM arrived at SFO with her fourteen year old daughter. IBRAHIM and her daughter were scheduled to leave on a United Airlines flight from SFO, at 9:00 a.m. IBRAHIM and her daughter, escorted by IBRAHIM's friend, went to the ticket counter to obtain their boarding passes and check in their bags. IBRAHIM informed United Airlines of her medical complications and requested wheelchair transportation to the airline gate.

30. At that time, United Airlines Supervisor, David Nevins, ("Nevins") approached IBRAHIM and asked to see her tickets. Nevins called the San Francisco Police Department ("SFPD") and informed them that IBRAHIM was on the No-Fly List. At the request of Nevins, police officers, J. Cunningham ("Cunningham"), and Richard Pate, ("Pate"), arrived at the airport. On information and belief, Pate checked the No-Fly List for IBRAHIM's name. He called John Bondanella ("Bondanella"), of the TSIS in Washington, D.C. Bondanella told Pate not to allow IBRAHIM on the flight, to contact the Federal Bureau of Investigation ("FBI"), and to detain IBRAHIM for questioning. A SFPD officer, whose name is not known to petitioner also arrived at the scene.

31. Meanwhile, IBRAHIM stood waiting for an hour and a half, with no wheelchair, while she suffered from back and abdominal pain. IBRAHIM's friend informed the SFPD officers several times of IBRAHIM's medical condition.

32. At 8:45 a.m., fifteen minutes before IBRAHIM's flight was scheduled to leave, respondent, Cunningham told IBRAHIM that she was being arrested. IBRAHIM was handcuffed by Cunningham, with her hands placed behind her back, in the middle of the airport, in front of her fourteen year old daughter, and everyone else at SFO. IBRAHIM was not informed as to why she was being arrested. Instead, she was taken to the SFPD police station, escorted by three male officers, while she sat in the back seat, rubbing her abdominal muscles from the pain.

33. Upon arriving at the police station, IBRAHIM was searched by another SFPD officer, Elizabeth Maron. During this search, Maron attempted to remove IBRAHIM's hijab and searched under her hijab in public view, before the other male officers. On information and belief, the police officers also informed the FBI of IBRAHIM's detention.

34. IBRAHIM was placed in a holding cell at the SFPD police station for approximately two hours while she continued to suffer from severe back and abdominal pain. IBRAHIM was not given her medication when she asked for it to relieve her pain. Eventually, the paramedics were called as a result of IBRAHIM's

medical condition. IBRAHIM was finally given her medication after the paramedics left.

35. On information and belief, the FBI finally requested SFPD to release IBRAHIM at approximately 11:15 a.m., over two hours after her flight had left. IBRAHIM was given no information as to why her name was on the No-Fly List.

36. The FBI represented to petitioner that her name had been removed from the No-Fly List. The following day, on January 3, 2006, IBRAHIM discovered that she was still on the No-Fly List when she attempted to fly again. After some effort, IBRAHIM was finally allowed to fly to Kuala Lumpur, Malaysia. At SFO, however, and at every stop over, IBRAHIM was publicly subjected to enhanced searches before boarding any flights. Upon her arrival in Malaysia, IBRAHIM received a letter from the United States Embassy in Malaysia, informing her that her visa and the visa of any of her family members, have been revoked. Since then, IBRAHIM has not been able to return to the United States.

37. The Security Directives issued by Respondent, the Transportation Security Administration, establishing the No-Fly List, on or about November, 2001, and the administration and management of the No-Fly List violates the rights afforded Petitioner and other individuals placed on the List, under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

38. 42 U.S.C. Section 1983 allows an individual to bring seek injunctive relief against any person, acting under color of law, who violates the constitutional rights of another.

39. The No-Fly List and the placement of IBRAHIM on this list is unconstitutional in that it violates the due process protections guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 7 and 15 of the California Constitution. On information and belief, the placement of names on the No-Fly List is done in an arbitrary and capricious manner and without any factual findings or rational basis.

40. Respondents' actions in administering and maintaining the No-Fly List deprived petitioner of liberty and property interests protected by the Fifth Amendment. Respondents are grossly negligent, reckless, and/or deliberately indifferent to the risk that the deprivations these actions cause. The deprivations are without due process of law because petitioner was not informed of her placement on the No-Fly List or given any opportunity to contest such placement. Also, respondents have failed to provide constitutionally adequate mechanisms for petitioner to avoid being subjected to the stigma, interrogations, delays, enhanced searches, detentions, and/or other travel impediments associated with having a name identical or similar to a name on the No-Fly List.

41. In doing the acts complained of herein, respondents deprived petitioner of her right to Equal Protection under the law as set forth in the Fourteenth Amendment to the United States Constitution. Respondents, in an arbitrary and capricious manner, placed IBRAHIM on the No-Fly List, and arrested her for several hours. On information and belief, respondents acted in a discriminatory manner, with the intent to discriminate, in that IBRAHIM was placed on the No-Fly List and arrested based on her religious beliefs and her national origin as a citizen of Malaysia.

42. In doing the acts complained of herein, respondents deprived petitioner of her right against unreasonable searches and seizures as set forth under the Fourth Amendment to the United States Constitution;

43. Respondents placed IBRAHIM on the No-Fly List, arrested her, and searched her without any probable cause or an arrest warrant. As alleged above, it is common for individuals who have no links to terrorist activity to be placed on the No-Fly List or to be detained for having a name similar to a name on the No-Fly List and to be subjected to enhanced searches without any cause.

44. In doing the acts complained of herein, respondents deprived petitioner of her freedom of religion and her freedom of association under the United States Constitution as set forth under the First Amendment to the United States Constitution;

45. Petitioner is an identifiable Muslim woman who wears the hijab. Respondents violated petitioner's freedom of religion and her freedom of association in that, on information and belief, petitioner, and other individuals placed on the No-Fly List, are targeted based on their religious beliefs or appearance, her association with the Muslim community or the Islamic religion, and based on her national origin.

46. Respondents, in committing the acts herein alleged, were acting under color of state law.

47. Respondents were acting in accordance with their custom, policy and/or practice in violating petitioner's constitutional rights as set forth above.

48. As a direct and proximate result of respondents' wrongful acts alleged herein, petitioner suffered severe damages, including humiliation and damage to her reputation, physical pain, emotional distress, and deprivation of her constitutional rights.

49. On information and belief, to date, no court has upheld the constitutional validity of the Security Directives.

PRAYER

WHEREFORE, petitioner prays for the following relief:

- a. For a declaration that respondents' maintenance, management, and dissemination of the No-Fly list are unconstitutional under the First, Fourth, Fifth and Fourteenth Amendments.
- b. For an injunction requiring respondents to remedy immediately the Constitutional Violations in the maintenance, management, and dissemination of the No-Fly list.
- c. For an injunction requiring respondents to remove IBRAHIM's name from the No-Fly List.
- d. For Costs of suit, including attorneys' fees;
- e. And such other and further relief as the Court may deem appropriate.

Dated: January 27, 2006

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RAHINAH IBRAHIM