

# **The Identity Project**

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## **State of New Mexico v. Phillip Mocek**

### **Airline passenger and “Freedom Flyer” arrested at TSA checkpoint faces criminal trial in Albuquerque, NM**

Case 2573709, Bernalillo County Metro. Court, 4th St. and Lomas Blvd. NW

**What is this case about?** Phil Mocek was arrested by Albuquerque police at a TSA checkpoint at the Albuquerque International Sunport on November 15, 2009. He had a valid ticket on Southwest Airlines, and was attempting to get to his flight.

**Why was Mr. Mocek arrested?** We don’t know. The first statement by the police (on their own live audio recording) was that he was being arrested, “for being stupid”. The real motivations of the police for arresting Mr. Mocek remain a potential issue at trial. Based on the available evidence, we are concerned that Mr. Mocek was arrested because he declined to show ID credentials, declined to answer questions about his identity, and/or because he attempted to photograph and record his interactions with the TSA and police – all of which were activities protected by the First Amendment and other laws.

**What are the charges against Mr. Mocek?** He is charged with criminal trespass (Albuquerque Code of Ordinances § 12-2-3), resisting, obstructing or refusing to obey a lawful order of an officer (§ 12-2-19), concealing his identity with intent to obstruct, intimidate, hinder or interrupt (§ 12-2-16), and disorderly conduct (NMSA § 30-2-1).

**Is Mr. Mocek guilty of any of these crimes?** So far as we can tell, no. There is no evidence of any of these crimes in the audio and video recordings released by the police. Mr. Mocek was calm, polite, and nonviolent. There is no evidence that he was disorderly, made any attempt to “conceal” his identity, or had any obstructive intent. As a ticketed passenger, his right of transit through the airport and the TSA checkpoint and by the airline as a common carrier was guaranteed by Federal law, the First Amendment, and Article 12 of the International Covenant on Civil and Political Rights. He was not trespassing, and any police order to leave the airport would have been unlawful.

**Why is this case important?** So far as we know, this is the first time someone in the USA has been arrested or charged with a crime for attempting to exercise their right to travel by air without showing ID or answering questions about themselves or their trip, or for photography or audio or video recording at a TSA checkpoint.

**Is there any law that requires you to show ID credentials to fly, or to the police?** No. In *Gilmore v. Gonzales* (decided at 435 F.3d 1125), a case involving the same airline, lawyers for the TSA swore to the 9<sup>th</sup> Circuit Court of Appeals that no Federal law or regulation requires airline passengers to show any evidence of their ID in order to fly.

**Is there any law that requires you to answer questions from the TSA or police?** No. You have the right to remain silent. Mr. Mocek explicitly invoked this right.

**Is there any law or regulation that prohibits or restricts photography or audio or video recording at TSA checkpoints or of police?** No. Prior to his flight out of ABQ, Mr. Mocek received written confirmation from Albuquerque TSA staff that there are no “state or city laws/ordinances that prohibit photography in the public areas of the airport.”

**Do you have a right to travel by air?** Yes. The “public right of freedom of transit” by air is guaranteed by the Airline Deregulation Act of 1978, and the TSA is required by Federal law (49 USC § 40101) to consider this right when it issues regulations. Airlines are common carriers. Mr. Mocek’s attempted trip was an exercise of “the right ... peaceably to assemble,” which is guaranteed by the First Amendment. Freedom of movement is also guaranteed by Article 12 of the International Covenant on Civil and Political Rights, a human rights treaty signed and ratified by the US.

**Can local police lawfully interfere with your right to travel, by air or otherwise?** No. The TSA checkpoint is a Federal facility, the airport and airline are Federally certified, and the right of travel by air is guaranteed by Federal law. Any interference with the passage of ticketed passengers, under color of state or local authority, would violate 42 USC § 1983. Interference by local police with air travel is forbidden by the same laws that forbade Southern sheriffs from interfering with interstate bus travel by Freedom Riders. In this sense, we see Mr. Mocek as a modern-day “Freedom Flyer.”

**What can I do to help?** Contribute to Mr. Mocek’s defense fund. Come to the trial. Spread the word. Organize a gathering to discuss the issue. Stand up for your own rights, and “just say no” to demands for ID. See our website for more on how to get involved.

**What is the Identity Project?** The Identity Project (<http://www.PapersPlease.org>) provides advice, assistance, publicity, and legal support to those who find their rights infringed, or their legitimate activities curtailed, by demands for ID, and builds public awareness about the effects of ID requirements on fundamental rights. We are part of the First Amendment Project, a 501(c)(3) nonprofit organization based in Oakland, CA.

**What is the role of the Identity Project in this case?** We are here to observe and report on the trial, to help explain the issues it raises, and to support Mr. Mocek’s rights (1) to travel without showing ID credentials or answering questions from the TSA or police and (2) to photograph and record his interactions with TSA and police officers. Nothing we say should be taken as legal advice or as representing Mr. Mocek or his attorneys.

**How can I get more information about the Identity Project?** Our website is at <http://www.PapersPlease.org>. Edward Hasbrouck, a spokesperson for the Identity Project, will be in Albuquerque at Mr. Mocek’s trial, and can be contacted at 415-824-0214.