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May 12, 2021

Director Christopher Wray
Federal Bureau of Investigation (FBI)
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Subject: No Fly List

Dear Director Wray:

I am writing to inquire about the No Fly List of the Terrorist Screening Database, also known as the "Terrorist Watchlist", maintained by the Terrorist Screening Center of the FBI. As you know, the Transportation Security Administration (TSA) implements the No Fly List through the Secure Flight program. According to TSA, individuals on the No Fly List are prevented from boarding an aircraft when flying within, to, from, and over the United States.

The freedom to travel with the United States is a protected and fundamental constitutional right. *Saenz v. Roe*, 526 U.S. 489, 501 (1999) ("we need not identify the source of [the right to travel] in the text of the Constitution. The right of 'free ingress and regress to and from' neighboring states which was expressly mentioned in the text of the Article of Confederation, may simply have been 'conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.'"). Indeed, Justice Douglas referred to "the right of free movement" as "a right of national citizenship."

In light of clear Supreme Court holdings on the fundamental nature of the right to travel, we question the basis for a No Fly List that is created in secret, maintained in secret, and provides no avenue to contest, challenge, or seek review. As explained by the Court in *Kent v. Dulles*, 357 U.S. 116 (1958):

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment. So much is conceded by the Solicitor General. In Anglo-Saxon law that right was emerging at least as early as the Magna Carta. 12 Chafee, *Three Human Rights in the Constitution of 1787* (1956), 171—181, 187 et seq., shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values. See *Crandall v. State of Nevada*, 6 Wall. 35, 44, 18 L.Ed. 744; *Williams v. Fears*, 179 U.S. 270, 274, 21 S.Ct. 128, 129, 45 L.Ed. 186; *Edwards v. People of State of California*, 314

U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119. 'Our nation,' wrote Chafee, 'has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.' Id., at 197.

It cannot be reasonably disputed that the right to travel within our country is as protected as the right to free speech. Therefore, in order to add a citizen to such a No Fly list, the federal government must prove a compelling state interest by clear and convincing evidence. In 2016 there were 81,000 people listed on the No Fly List, and 1,000 were U.S. citizens, none of whom were notified or ever given a hearing.

Recent reports indicate that Americans, citizens with no charges much less convictions for terrorism or violence, are continuing to have their constitutional rights infringed without any due process, much less minimal due process. This troubling trend of political persecution by federal agencies is unconstitutional, immoral, and illegal, and the program merits significant oversight and reform. As described by U.S. citizen and Marine Corp veteran Ibraheim Mashal:

"You're on the no-fly list," the woman at the kiosk told me. It was a Wednesday, six years ago, at Midway Airport in Chicago. I was traveling to Spokane, Washington, for my job as a dog trainer. I had absolutely no idea how I could have ended up on the No Fly List.... At least 30 federal agents swarmed me. They didn't handcuff or manhandle me, but the sheer number of them was intimidating. I was in a state of shock, looking at them confusedly.

Hundreds of other citizens have likewise been subjected to such unconstitutional deprivations, including most recently Nicholas Fuentes. Accordingly, please respond answering the following:

1. Does the FBI continue keep a formal or informal No Fly List?
2. Does the FBI have a process for evaluating whether someone is able to fly and how do citizens' rights factor into the evaluation process?
3. Are political views a factor on whether an individual can fly?
4. Does attendance at free speech events or political protests factor into designation on the list?
5. Does the FBI ban citizens from flying based on perceived speech, expression of ideas, or association?
6. Are individuals notified if they are unable to fly?
7. Are any U.S. government officials on the No Fly List?
8. Are any individuals associated with the January 6 rally at the White House Ellipse, who have not been charged with crimes, banned from air travel?
9. Which agencies or entities have access to the No Flight List or Secure Flight program information?
10. Are there any foreign nationals on the No Fly List that could avoid oversight by traveling on a private plane?
11. Is there a sufficient process for U.S. citizens to appeal designation on such a list?
12. Are innocent American citizens, not accused of any crime, on the No Fly List?
Who and how many?

13. Since the beginning of the program how many U.S. citizens, who were at one point on the No Fly List, have never been convicted of a crime?
14. What is the legal authority that you contend gives you the right to arbitrarily add U.S. citizens to no fly lists without any due process of law, without notice, and without any opportunity to contest the decision in a timely manner?

I look forward to substantive responses to these questions. FBI and TSA's dubious actions to limit and revoke constitutional rights will not be ignored.

The prevalence of false positives has been a recurring problem with the program and necessitates congressional oversight. The late Senator Ted Kennedy was famously included on the No Fly List because "T Kennedy" was an alias of a suspected terrorist. Current Dean of the House of Representatives, Don Young, was also inappropriately associated with the No Fly List. In our view, FBI and TSA must provide prompt notice, with a full explanation of the reasons, and the ability for the person being banned to challenge the designation administratively, and then with a court review.

The Traveler Redress Inquiry Program appears to be wholly insufficient for redress. Frankly, a private right of action against federal officials is warranted.

Should you have any questions or concerns please don't hesitate to contact my office. Please abide by all rules and regulations when responding to this request by May 21, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Paul A. Gosar, D.D.S." The signature is stylized and includes a large, looped initial "P" and "G".

Paul A. Gosar, D.D.S.
Member of Congress

Cc:
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