

***Tanvir v. Holder*: Frequently Asked Questions about the FBI Informant Program and the No Fly List**

What is this case about and what are you challenging?

Our lawsuit, *Tanvir v. Holder*, challenges the government's exploitation of the secretive No Fly List in order to coerce innocent people into spying on their Muslim communities. Each of the four plaintiffs in our case, all Muslim men, were approached repeatedly by the FBI and asked to become informants against innocent Muslims in their own community. All of them were opposed to doing so for religious, moral, and political reasons. Some plaintiffs found themselves on the No Fly List shortly after refusing to work for the FBI and were told by the FBI they could get off only if they agreed to become informants. Others were approached by the FBI shortly after finding themselves unable to fly and were told they would be removed from the List if they agreed to cooperate. None of them pose any threat to aviation security. Because of their placement on the No Fly List, our clients have been separated for years from their family abroad, and have been unable to see wives, children, and ailing parents and grandparents.

The government operates the No Fly List under near-total secrecy and never tells people on the List why they are listed or gives them a meaningful chance to dispute their placement. The only process available for relief is the TRIP program, whereby travelers who encounter problems may file an inquiry with DHS, but never receive any confirmation or denial that they were on the list or that any change in status has taken place in response. Even after filing a TRIP complaint, generally the only way to tell whether one is still on the list is to buy a plane ticket and attempt to fly.

Because all the secrecy makes it virtually impossible for a person to prove that they should not be on the No Fly List, it gives the FBI enormous unchecked power to abuse the List and use it unlawfully as an extrajudicial tool to coerce and intimidate individuals – particularly those in the Muslim community whom the FBI targets in its counterterrorism efforts – into cooperating. That is precisely what the FBI did in our case. Our lawsuit argues that the FBI acted unlawfully when, knowing full well that our clients were not terrorists or risks to aviation security, they put our clients on the No Fly List or kept them on the No Fly List because our clients exercised their constitutional right not to cooperate with the FBI as informants.

This complete lack of transparency and accountability makes the List ripe for abuse by FBI field agents who, in the post-9/11 environment, often face pressure from their superiors to recruit human sources, and have a great deal of individual discretion to nominate individuals to the list with only the most minimal oversight from superiors.

What is the No Fly List?

The No Fly List is a shadowy and secret list maintained and controlled by the U.S. government that bans individuals indefinitely from flying to, from, within, or over U.S. airspace. A person placed on the No Fly List is banned from flying, regardless of the degree of pre-boarding screening that is applied.

Due process requires the government to provide notice and a meaningful opportunity for a hearing when it seeks to deprive them of a fundamental right. Under the Constitution, individuals

have a fundamental right to travel freely, and when family and work require international travel, flying is often the only option. The No Fly List fails on all accounts. The government has stated only vaguely that the No Fly List is meant to bar individuals who are deemed “risks to aviation security” from flying, but no one knows what conduct or action would meet that description, or what the evidentiary standard is. The U.S. government refuses to even tell someone that they have been put on the No Fly List, and the person is never told of the reasons why they are banned from getting on a plane. Nor is a person allowed to see any of the facts or evidence the government has against them in the limited TRIP process provided by the government. Our lawsuit argues that the architects of the No Fly List should be held responsible for these constitutional violations.

How does the FBI use and recruit informants?

Since 9/11, the FBI has been focused on expanding its domestic surveillance and intelligence gathering programs as part of their counterterrorism efforts. As part of that effort, the FBI has greatly expanded its network of informants who, at the FBI’s behest, infiltrate communities and spy on the activities of millions of law-abiding Americans. In 2008, the FBI disclosed that it had 15,000 informants on its payroll, the most it’s ever had in its history. That number doesn’t include number of unofficial informants they use, which may be triple the number of official informants.

The FBI recruits many of these informants to go into communities with large Muslim populations and asks them to report back on the activities of innocent individuals within that community – without any reason to believe that there is criminal activity afoot. Informants are told not only to spy on what people are doing, but also to talk to individuals to find out embarrassing or potentially incriminating information, pose as radical fundamentalists, and sometimes, lure others into engaging in illegal activity.

The FBI’s informant recruitment efforts are heavily targeted at men of Arab, Middle Eastern, Muslim, and South Asian descent. The agency has stated that it is prohibited from using threats or coercion to recruit informants, but this is often exactly what happens. Individuals have recounted how the FBI threatened them with baseless terrorism charges or deportation to gain their cooperation, or have brought charges against them in retaliation for their refusal to work as an informant. Although it’s difficult to know just how often these tactics are being used, one organization estimates that number to be in the hundreds. Among all the tactics used by the FBI to recruit informants, the use of the No Fly List is most problematic for the reasons described above.

How many people are on the No Fly List?

Although the government had made efforts to reduce the number of people on the No Fly List seven years ago, it is now once again ballooning in size. In 2009, the AP reported that there were 3,400 individuals, including 170 U.S. residents, on the No Fly List. Following the Christmas day bombing attempt on a Northwest Airlines flight in December of that year, the government revised its criteria for inclusion on the No Fly List and three months later, in March 2010, the No Fly List had nearly doubled to 6,000 names. At a March hearing of the Senate Homeland Security Committee, one government official stated that the No Fly List would be pulling in more people. “It’s getting bigger and it will get much bigger,” he said. Sure enough, by 2011, the

No Fly List contained approximately 10,000 names. As of February 2012, there were approximately 21,000 people on the List because too dangerous to board a plane under any circumstance.

Are there other watchlists? Are there other No Fly lists?

The No Fly List is just one of several terrorist lists maintained by the U.S. government and it is a subset of a much larger, centralized terrorist watchlist that contains information on everyone who the government suspects of doing something “related to terrorism or in aid of terrorism.” The larger watchlist is called the Terrorist Screening Database and it is maintained by the Terrorist Screening Center (TSC), which is a division of the FBI. As of May 2013, there were 875,000 names in the centralized Terrorist Screening Database.

Names are added to the central database by nominating agencies such as the FBI, and they are added from the bottom up by agents in the field. The evidentiary standard is very low: To be placed in the terrorist database, the government need only have “reasonable suspicion” that someone is involved in terrorism, which is not enough to charge someone with a crime. The database (which includes individuals on the No Fly List) is disseminated widely across federal and state government agencies.

The government maintains a second list related to airport security called the Selectee List. Individuals on the Selectee List are subject to additional screening at the airport but are allowed to fly. Both the Selectee List and the No Fly List are for individuals who “pose a risk to aviation security,” but the government has never publicly explained the distinction between the two lists, or why a No Fly List preventing individuals from flying altogether is necessary above and beyond a Selectee List.

What are you asking for in your lawsuit?

CCR and CLEAR are suing the FBI officers who retaliated against our clients by putting them on the No Fly List or keeping them on the No Fly List because our clients exercised their rights, protected by the First Amendment, to refuse to become informants against their own community. The lawsuit also sues the directors of the FBI, the Department of Justice (DoJ), Terrorist Screening Center (TSC), and the Department of Homeland Security (DHS) for creating a system that fails to provide people with any fair process for challenging their placement on the No Fly List. The suit also argues that the FBI, DOJ, TSC, and DHS were also responsible for supporting the FBI’s use of the No Fly List in an unlawful manner.

The lawsuit seeks compensation for our clients, who suffered and continue to suffer deeply from their experience with the FBI and with being unable to fly. It also asks the government to take our clients off of the No Fly List and inform them that they are actually off the List. Finally, it asks that the government create a constitutional process that would, at minimum, give people notice that they are on the No Fly List with an explanation for why they are on the List, as well as a fair opportunity to challenge their inclusion on the List.