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The No-Fault No-Fly List: Washington's Most Irresponsible Agency Strikes Again by James Bovard

The Transportation Security Administration got another black eye recently when Sen. Ted Kennedy (D-Mass.) revealed that he had been blocked from flying five times because his name triggered an alarm on the feds' No-Fly list. Kennedy's staff had to make multiple calls to high-ranking federal officials before the attempted travel ban was lifted on the Senator-for-Life. One senior Bush administration official explained that the senator's name was on the list because a suspected terrorist had used "T. Kennedy" as an alias.

And the embarrassment was compounded when the feds ordered a United Airlines flight from London to land in Bangor, Maine, because of the presence aboard of rock singer Cat Stevens, known as Yusuf Islam since his religious conversion. His name apparently triggered an alert because the U.S. terrorist watch list contains the name "Youssef Islam." The former singer is now a highly respected peace activist; his efforts to spread a moderate form of Islam have been praised by Jewish leaders in London. The British government denounced the U.S. government action.

The Kennedy and Cat Stevens debacles are reminders that, three years after 9/11, the federal government is still floundering when it comes to identifying threats against the homeland. Terrorism watch lists have been a key vulnerability for the United States for more than a decade. And yet, the TSA still cannot pass the laugh test with its watch list.

Watch-list debacles were key factors on 9/11. On the morning of September 12, 2001, airlines received a fax from the FAA with a list of 300 people classified as dangerous by federal agencies and who were henceforth prohibited from boarding any flight. The FAA had not previously bothered compiling and forwarding to airlines a list of "flight risks" it received from the FBI, CIA, and its own experts. "Two of the [9/11] hijackers were on those September 10 lists," *Newsweek* contributing editor Steven Brill noted. But the FAA "crossed those names off on September 12 to avoid embarrassment," Brill reported.

After 9/11, the new Transportation Security Administration took over administration of the No-Fly list. Unfortunately, TSA is relying on a “close enough for government work” standard that bars many innocent Americans from air travel. The *Wall Street Journal* noted, “Many entries on the list lack details that could make it easy to know if a traveler is really the person named. TSA gives airlines little guidance on just when a passenger’s name is close enough to one on the list to warrant flagging the person for a law enforcement check.”

At San Francisco International Airport, 339 travelers’ names set off alarms in the official database as they sought to travel between September 2001 and early 2003. Many travelers are erroneously stopped time and again, and taken aside for intensive questioning, regardless of how many times they previously proved that they are not members of al-Qaeda or Irish terrorists or Aryan Nation kingpins. People with the name “David Nelson” have been especially afflicted by the list.

In July, 258 people filed written requests with TSA seeking removal from the No-Fly lists, the *Washington Post* reported on August 21. The TSA has no idea of the total number of people who have sought to have their names excised from the list. Failing to keep track of the number of its victims makes it easier for TSA to deny its debacles.

The American Civil Liberties Union sued TSA to find out how many people are on the No-Fly list and to find out the agency’s procedures for administering the list. In June, federal judge Charles Breyer lambasted the agency for refusing to provide almost any information on how its flight-ban system operates. Breyer commented, “In many instances, the government has not come close to meeting its burden, and, in some cases, has made frivolous claims of exemption” from the Freedom of Information Act.

The No-Fly list debacles illustrate why TSA may be Washington’s most irresponsible agency. David Sobel, general counsel of the Electronic Privacy Information Center, observed, “Nobody wants to accept responsibility for the maintenance of the [no-fly] list and nobody wants to claim the authority to remove a name.” TSA officials responded to the Kennedy embarrassment by blaming airlines, which administer the list for the government. TSA spokeswoman Yolanda Clark claimed, “What is flawed in the identification system is the administration of this list.” But airlines do not have an incentive to persecute their would-be customers.

There is no reason to expect to wake up on some bright sunny morning and suddenly hear that the federal government has, overnight, become competent. The war on terrorism, like other government endeavors, will continue to be slipshod and unreliable. It is only a question of time until the next TSA debacle hits the front pages.

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