

Center for Constitutional Rights

Discrimination, Detention, and Deportation: Immigration & Refugees

<https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/supreme-court-case-tanzin-v-tanvir>

Policy Issue Resources

Tanzin v. Tanvir is a case brought on behalf of American Muslims who were placed or kept on the No-Fly List by the FBI for refusing to spy on their Muslim communities. The Center for Constitutional Rights, the [CLEAR project at CUNY Law School](#), and the law firm of [Debevoise & Plimpton](#) are representing the plaintiffs in the case. What happened to our clients is part of a long history of federal agents abusing tools at their disposal to target Black, Brown, and Indigenous communities. The case was argued before the Supreme Court on October 6 ([audio of the argument](#)), and on December 10, 2020, the Supreme Court [unanimously ruled in our favor](#).

Our clients, three American Muslim men, were placed or kept on the No-Fly List by the FBI in retaliation for their refusal to spy on their Muslim communities.

In the last two decades, the FBI has expanded its domestic surveillance and intelligence gathering programs. This includes the increased use of informants who infiltrate communities and spy on the activities of millions of law-abiding Americans. The three plaintiffs in this case, [Muhammad Tanvir](#), Jameel Algibhah, and Naveed Shinwari, were approached repeatedly by the FBI and asked to infiltrate and spy on the activities of Muslims in their own communities even though no criminal activity was taking place. All of them were opposed to doing so for religious, moral, and political reasons.

The FBI intimidated and harassed our clients: they and their family members were repeatedly visited by FBI agents at their homes and workplaces; they were surveilled, detained and questioned at airports, and they had their passports confiscated. In every interaction, the men answered questions truthfully and also exercised their right not to spy on their communities. Because of this, the FBI agents retaliated against them.

Some of the men 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 No-Fly List if they agreed to cooperate. Because of their placement on the No-Fly List, our clients could not travel and were separated for years from wives, children, and ailing parents and grandparents. There have never been any allegations that our clients posed any kind of security threat. Their placement on this list was solely to coerce them into spying on their religious communities.

Together, they filed [a lawsuit](#) challenging the government's abuse of the No-Fly List for this purpose. In 2015, just days before we were to go to court for the first major oral argument in the case, the men received letters from the U.S. government confirming they were no longer on the list. They have lost work, been stigmatized within their communities, and suffered financial hardship and emotional distress as a result of their placement on the list and are looking for a measure of justice from the courts.

The lawsuit is currently against 15 FBI agents in their individual capacity for abusing the unbounded discretion federal officials have in placing individuals on the No-Fly List.

When the case was first filed, high-level U.S. officials responsible for creating, maintaining, implementing, and supervising the No-Fly List were also defendants in the case. That included then-Attorney General Eric Holder, FBI Director James Comey, Director of the Terrorist Screening Center Christopher Piehota, and Secretary of Homeland Security Jeh Johnson. When our clients were subsequently removed from the No-Fly List, the only issue that remained was whether they could receive damages for what happened to them, and we pursued our claims against the FBI agents in their individual capacity.

The No-Fly List is a secret list maintained and controlled by the U.S. government that bans individuals indefinitely from flying to, from, or over U.S. airspace. It is known for its lack of transparency, which makes it ripe for abuse by government officials.

Law enforcement has long targeted communities, including Muslims, through a range of extrajudicial means: extensive surveillance of their religious and community spaces, aggressive informant recruitment, placement on the No-Fly List and other secret lists, and holds on immigration status and other benefits that made it impossible for individuals to travel or reunite with their family, to name a few.

Leaked guidelines for placement on the No-Fly List revealed that the government puts individuals on the list based on criteria that are hopelessly vague and do not require individuals to be a threat to aviation security. The threshold for barring someone from flying under any circumstances is extremely low, and placement on the list is at the complete discretion of law enforcement. While the guidelines state that activity protected under the First Amendment "alone shall not be the basis" for nomination, that language implies it can be a factor. The same applies to other classifications: nominations shall not be made "solely on race, ethnicity, national origin, or religious affiliation," but the qualifier "solely" indicates that race and religion may be a basis for nomination in combination with at least one other factor. Although the Terrorist Screening Center (TSC), which creates and maintains the list, is expected to review each nomination, in practice the TSC almost never rejects the FBI agents' nominations to the list. While individuals can find out they are on the list when

they are prevented from boarding a plane, they are not allowed to see any of the facts or evidence the government has against them when they try to challenge being on the No-Fly List.

Because the secrecy still 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 a coercive tool to intimidate individuals such as those in Muslim communities into being informants. This lawsuit argues that the FBI acted unlawfully when, knowing full well that our clients did not pose any legitimate threat to aviation security, agents put our clients on or kept them on the No-Fly List because they refused to spy on their communities.

The legal question before the court was whether Congress intended to allow for individuals to receive damages when government officials have interfered with their freedom to practice their religion.

In 2015, a district court judge dismissed this case against the individual FBI agents, refusing to allow the men to seek damages for the harm they suffered as a result of being placed on the No-Fly List. In dismissing the case, the district court reasoned that even if the federal agents had violated the Constitution, a 1993 statute, the Religious Freedom Restoration Act (RFRA), does not currently afford a damages remedy for the specific type of religious and speech retaliation the men suffered.

The men appealed the case to the Second Circuit Court of Appeals, arguing that, in fact, many other courts and the Justice Department's own Office of Legal Counsel agreed in a published opinion in 1994 that RFRA does allow for a damages remedy. In May 2018, the appeals court ruled in favor of the men and reinstated their damages case against the individual agents. The full Second Circuit subsequently declined to reconsider that ruling, and defendants appealed to the Supreme Court. The case is scheduled for telephonic argument on October 6.

Congress enacted the RFRA to protect religious freedoms, including those of religious minorities. Majority religions do not face discrimination in public life. Here, the Supreme Court will have an opportunity to consider the application to Muslims and other religious minorities that law enforcement is more likely to target. While RFRA has typically been used to achieve injunctive relief getting the defendant to stop a specified act or behavior we argue that it also allows for damages. There are a number of elements to a successful RFRA claim that any plaintiff, regardless of their religion, would have to establish before damages would be available.

On December 12, 2020, [the Supreme Court unanimously](#) upheld our clients' right to sue federal officials for damages under RFRA.

Communities continue to be targeted by federal law enforcement, and we need accountability for abuses.

The Islamophobic and xenophobic sentiment that fueled discriminatory policies in the name of "security" post-9/11 continue to this day, as does the expansion of powers given to law enforcement. We are witnessing a blatant and well-resourced federal crackdown of a vibrant movement of protestors, with communities of color at the center, in defense of Black lives. We are seeing in real-time the dizzying expanse of tools at federal agents' disposal and their deployment to target, suppress, and surveil individuals and movements across the country on the streets and in their homes, under the guise of "maintaining security."

The government wants its officials to be above the law, but they are not. Federal agents are untethered and unfettered, and the courts must play a role in holding them accountable for their abuses. A financial penalty is one way to do this. Without accountability for past abuses, it will be even more difficult to fight the impunity we are seeing now from the Trump administration and deter future government officials from committing serious abuses. This case presents an opportunity to push back, through the imposition of liability, on federal agents abuse of power.

Accountability is also an essential step towards achieving justice for individuals who suffer government abuse. Interactions with law enforcement can be incredibly disruptive, traumatizing, and difficult to challenge. Through this lawsuit, our clients are fighting back. They are entitled to compensation after having had their lives thrown into chaos by FBI agents who abused their power, and they hope that a victory in their case will help protect individuals from being subjected to similar abuse in the future.

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