



Omar T. Mohammadi

## Flying while brown: Racial profiling and the US constitution

Many Americans think all Muslims should be treated as terrorists until they prove otherwise [Getty]

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77

**Comment: Omar T. Mohammedi - speaker at this year's American-Arab anti-discrimination convention and lawyer for 'the Six Imams' case - discusses racial profiling by airlines in the US.**

ng number of civil rights violations against Muslims, Arabs, South Asians and anyone who is perceived to be of Middle Eastern heritage, is alarming. These violations are committed by our law enforcement, private and public institutions, as well as ordinary citizens.

As a lawyer I have an even deeper concern knowing that many Americans feel that all Arabs and

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Muslims should be treated as terrorists until they can prove otherwise. It seems the notion of a person is innocent until proven guilty has been reversed.

Guilt by association has become the ordinary analysis of many scholars. The American public is being subjected to a daily barrage of right-wing anti-Muslim rhetoric from Donald Trump and other public officials, that goes largely unchallenged. This has resulted in further violations of civil rights against members of the Muslim and Arab communities.

Statements made by some right-wing extremists and media outlets are resulting in profiling, discrimination and hate crimes such as the unprecedented surge in killings of Muslims in New York and around the country.

Religious profiling by the authorities has been conducted under many forms. To begin with, there is the illegal surveillance of the entire community without any valid lead. One of the most problematic forms of profiling is committed when Muslims are traveling by air. Passengers should not be profiled based on their religion, as an airline security device.

Unfortunately, this device has become very popular among the airlines and even passengers, leading to removal from the aircraft, detainment and questioning of many innocent travelers who are of Muslim, Arab or South Asian origin.

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**It seems the notion of a person as innocent until proven guilty has been reversed**

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support for implementing profiling of specific national origin, religious, or ethnic groups as a central principle of aviation security strategy.

Scholars, government officials and political commentators have suggested that aviation racial profiling could have averted the 9/11 hijackings, and have also argued that racial profiling is a necessary aviation security and law enforcement mechanism.

From this point of view, racial and religious profiling by airlines treats passengers as "criminals in the absence of specific evidence of individual criminality, and [treats] passengers unequally" on the basis of a specific physical characteristic that has no causal relationship to terrorism or even criminal activity.

This does not merely subject the passenger to inconvenience, it can also be a degrading and humiliating experience. There are also many cases of airline discrimination where passengers have been humiliated, deplaned, questioned and even detained without any legal basis.

### **The Six Imams case**

On November 20th, 2006, six Muslim clerics arrived at the Minneapolis-St. Paul Airport on their way home to Arizona. Later they would gain fame - as [the Six Imams](#).

They sat at the gate waiting to board, talking cheerfully among themselves. In the meantime, some news weary co-passengers looked on with fear. As was the case in then, and is still the case now - 16 years since the 9/11 terrorist attacks - passengers had been bombarded with the images of bearded Muslims secretly trying to blow up everything.

Twenty-four hour news networks worked round the clock to keep Americans stricken with fear of the "other".

In this climate of fear, the imams did what every devout Muslim did everywhere in the world. They stood up and prayed their evening prayer together. The onlookers were now certain that their suspicions were a reality, America was under attack again. When boarding for Flight 300 began, the Imams boarded the plane normally and took the seats assigned to them by the airline.

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“ **Airlines and authorities profile people based on their religion as an airline security device** ”

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One passenger, overcome with fear, wrote a note to the flight attendant. Little did he know this note would spark a national debate over civil rights versus national security and a litigation that would last more than three years.

The flight attendant passed it on to the pilot. The note simply said:

"6 suspicious Arabic men on plane, Spread out in their seats. All were together saying 'Allah... Allah' Cursing US involvement w/Saddam before

Flight – 1 in front exit row, another in first row first class, another in 8D, another in 22D, two in 25 E&F"

The imams had been treated with "suspicion" before boarding their flight, when US Airways was alerted

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There is no doubt that since the attacks of 9/11, Arabs and Muslims have been most adversely affected by racial profiling, extra security screenings and other humiliating security measures at airports.

Two weeks following the filing of the lawsuit, Congressman King, an elected Islamophobe introduced and lobbied for the enactment of a bill to prevent the six imams from seeking justice and to redress their civil rights violation. The bill was enacted and President Bush signed it [into law](#) in 2007.

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“ **Twenty-four hour news networks worked round the clock to keep Americans stricken with fear of the 'other'** ”

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The bill sought absolute immunity for the airlines and law enforcement agents. Such immunity would have violated the six imams' constitutional rights under the first, fourth, fifth and sixth amendment rights. The new bill attempted to reject and legislatively dismiss the six imams' lawsuit for profiling and discrimination.

It attempted to grant immunity to law enforcement and airlines who conduct unreasonable searches, unlawful seizures without a warrant and deny services based on race, religion and national origin - all things that are unconstitutional.

**A triumph for religious minorities**

Following the issuing of the bill, the defendants argued that because the 9/11 attacks were carried out by radical Muslim terrorists, it would therefore be reasonable for all law enforcement and transportation security to suspect all Muslims to the fullest extent possible.

This includes even precautionary removal from aircrafts and false arrest. Moreover, the defendants contended that not doing so would be unconscionable even if Muslims were engaging in purely innocent and constitutionally protected activity.

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“ Looking different, sounding different or practicing a different religion is not a suspicious activity ”

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Fortunately, this case brought the scope of this statute to be challenged. The end result was a triumph for the six imams and all minorities.

Judge Montgomery found that there would be no license for law enforcement to racially profile against Arabs and/or Muslims at airports without any consequences.

The Judge's decision addressed the facts of this case and whether the imams' behavior was, in fact, suspicious. The behavior, upon which the imams were removed from the aircraft, searched and arrested were as follows:

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The Judge explains in further detail that the Middle Eastern descent of the imams does not at all enter into the equation for probable cause, "[s]imilar behavior by Russian Orthodox priest or Franciscan monks would likely not have elicited this response".

Regarding praying, discussing current events and even criticising government policy, the Judge stated that these were all constitutionally protected activities under the first amendment.

### **Racial profiling ruled unconstitutional**

While security is paramount to keeping people safe while flying, passengers cannot be discriminated against, profiled, detained falsely arrested in violation of their first, fourth, fifth and sixth amendment rights.

Religious activity is not a suspicious activity. It is a sacred activity protected under the first amendment rights. Looking different, sounding different or practicing a different religion is not a suspicious activity.

Profiling passengers based on these characteristics is a violation of the Equal Protection Clause under the constitution. I encourage everyone who is exposed to these egregious acts to seek justice, for not only himself/herself but for all minorities. After all, constitutional principles will only be a document to read, if they are not correctly applied.

**Mohammedi is the founder and managing partner of Omar T. Mohammedi Law Firm and President of the Association of Muslim American Lawyers. He is a Professor at Fordham Law School and served as the first Arab-Muslim New York City Commissioner on Human Rights from**

2002 to 2014.

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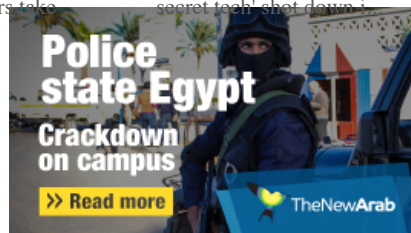
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