

AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY
Edward L. Barocas (ELB-8251)
John C. Salyer (JS-4613)
35 Halsey Street, Suite 4B
Newark, NJ 07102
973.642.2084

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Reginald T. Shuford
E. Vincent Warren
125 Broad Street, 18th Floor
New York, NY 10004
212.549.2500

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MICHAEL DASRATH,)	Civil Action No.:
)	
Plaintiff,)	
)	COMPLAINT FOR
v.)	DECLARATORY, INJUNCTIVE,
)	AND MONETARY RELIEF
CONTINENTAL AIRLINES, INC.)	
)	
Defendant.)	
)	
_____)	

Plaintiff Michael Dasrath, by and through his counsel, American Civil Liberties Union and American Civil Liberties Union of New Jersey, as and for his Complaint alleges the following:

NATURE OF THE CASE

1. Plaintiff, a United States citizen born in the Republic of Guyana, brings this action seeking declaratory, injunctive, and monetary relief against Continental Airlines, Inc. for unlawful discrimination. In the manner described herein, agents of the defendant unlawfully removed plaintiff from one of its flights, for which he possessed a valid ticket, on the basis of his perceived race, color, ethnicity, alienage, ancestry, and/or national origin. Defendant's actions were intentional and in violation of 42 U.S.C. § 1981; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d; and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. In addition to seeking compensatory and punitive damages, plaintiff seeks declaratory and injunctive relief requiring defendant to desist from and remedy such discriminatory action.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Plaintiff's action for declaratory, injunctive, and/or monetary relief is authorized by 28 U.S.C. §§ 1343(a)(4), 2201, and 2202.
3. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events giving rise to plaintiff's claims occurred within this district.

INTRODUCTORY STATEMENT

4. This civil rights lawsuit is brought to ensure that the promise of equal treatment embodied in federal and state anti-discrimination laws does not become a meaningless guarantee for persons perceived to be Arab or Muslim. Since the horrific events of September 11, our nation has witnessed an alarming rise in incidents of discrimination against Arab and Muslim Americans and against persons perceived to be Arab or Muslim. In response to this troubling backlash, President Bush, in his first address to Congress following the attacks, felt compelled to declare that "no one should be singled

out for unfair treatment or unkind words because of their background or religious faith.” Attorney General Ashcroft was equally adamant in proclaiming, just days after the attacks, that “we must not descend to the level of those who perpetrated Tuesday's violence by targeting individuals based on their race, their religion, [or] their national origin.”

5. Federal law expressly provides that an “air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.” 49 U.S.C. § 40127(a). Nevertheless, since September 11, reports of air carriers discriminating against passengers perceived to be Arab or Middle Eastern have risen dramatically. As early as September 21, 2001, the Department of Transportation (DOT) responded to these incidents by sending an e-mail to several major airlines, including Continental Airlines, in which it warned that it had “seen several reports of airlines apparently removing passengers from flights because the passengers appeared to be Middle Eastern and/or Muslim.” The DOT cautioned airlines “not to target or otherwise discriminate against passengers based on their race, color, national or ethnic origin, [or] religion, or based on passengers' names or modes of dress that could be indicative of such classification.” On October 17, 2001, the DOT sent a second e-mail to the airlines, stating that “it is important to reemphasize that in performing our critical duties, we may not rely on generalized stereotypes or attitudes or beliefs about the propensity of members of any racial, ethnic, religious, or national origin group to engage in unlawful activity.”

6. Notwithstanding the forceful statements of the DOT and the clear mandates of federal law, passengers perceived to be Arab or Middle Eastern – and in some instances, even those associating with them – have continued to be subjected to discriminatory treatment by airlines. Indeed, the DOT, which tracks consumer complaints in a monthly “Air Travel Consumer Report,” has for the first time added a category of complaints specifically addressing alleged incidents of discrimination. Between January and March of 2002 – the first period for which these statistics are available – the DOT documented 84 complaints of discrimination by air carriers, including several against Continental Airlines.

7. This suit is brought in response to one such egregious incident. In an act of

blatant racial discrimination, Plaintiff Michael Dasrath, an American citizen of Indian descent, was kicked off a flight for which he possessed a valid ticket simply because, he was told, a fellow passenger felt uncomfortable having him on board. Continental Airlines, by its conduct during and after Mr. Dasrath's removal from his flight, has effectively conceded that its actions were not based on legitimate security considerations: following Mr. Dasrath's removal from the plane, he was never once questioned or searched by security personnel and was soon thereafter issued a boarding pass for another Continental flight. Mr. Dasrath brings this suit to ensure that he will never again be subjected to similar unlawful and humiliating treatment by Continental Airlines.

THE PARTIES

Plaintiff

8. Plaintiff Michael Dasrath is a thirty-two year old citizen of the United States. He is a native of the Republic of Guyana, South America, and moved to Brooklyn, New York with his family at age one. Mr. Dasrath became a naturalized citizen of the United States at ten years of age. He is dark-complected and outwardly appears to be of Middle Eastern or Indian descent.
9. Mr. Dasrath has a Masters in Business Administration and currently is employed as an analyst in the Internal Consulting Services Division of J.P. Morgan Chase in New York City.

Defendant

10. Defendant Continental Airlines, Inc. is an air carrier engaged in the business of transporting passengers. Its corporate headquarters is located at: 1600 Smith Street, Houston, Texas 77002.
11. As of May 7, 2002, Continental Airlines, Inc. had received at least \$317,537,751 in federal financial assistance from the U.S. Department of Transportation, pursuant to sections 101 and 103 of the Air Transportation Safety and System Stabilization Act, P.L. 107-42.

FACTS GIVING RISE TO THIS ACTION

12. On the afternoon of December 31, 2001, Mr. Dasrath arrived at Newark International Airport with the intention of traveling on a Continental Airlines flight to Tampa, Florida. Mr. Dasrath's wife and two young sons, ages five and three, live in Tampa, and Mr. Dasrath was traveling to spend New Year's Eve with his family.

13. Mr. Dasrath's wife is an employee of Continental Airlines. Consequently, Mr. Dasrath is eligible to receive and use what are termed "non-revenue" tickets from defendant. These tickets entitle Mr. Dasrath to fly on Continental flights on standby status for a significantly reduced fare. Mr. Dasrath relies on this privilege to travel from Newark to Tampa approximately twice every month to visit his wife and children.

14. Mr. Dasrath's wife reserved for him a "non-revenue" electronic ticket to travel on Continental Airlines Flight #1218, scheduled to depart from Newark on December 31, 2001, at 4:10 p.m. EST and to arrive that night in Tampa at 7:05 p.m. EST. As with all "non-revenue" tickets issued by Continental Airlines, Mr. Dasrath's electronic ticket for this flight indicated that he was traveling on a "non-revenue" ticket.

15. When Mr. Dasrath arrived at Newark International Airport, he proceeded to wait in line at the Continental Airlines ticket counter. He had one suitcase and one piece of carry-on luggage in his possession. The suitcase contained a computer that Mr. Dasrath was bringing to Tampa as a present to his children. Prior to packing the computer, Mr. Dasrath carefully wrapped it in bubble wrap to protect it during the flight. Mr. Dasrath's carry-on bag contained a few items of clothing, as well as toys he intended to give his sons as additional gifts.

16. While waiting in line, Mr. Dasrath was approached by an agent of Continental Airlines, who placed a tag on Mr. Dasrath's suitcase indicating that it would be subjected to a random x-ray search prior to check-in. The suitcase subsequently was placed through the x-ray machine without incident and was checked by the Continental agent at the check-in counter.

17. Mr. Dasrath then proceeded to the airport security checkpoint. He placed his

carry-on bag on the screening machine and proceeded through the security gate. Although the security alarm sounded as he passed through the gate, security personnel quickly ascertained that Mr. Dasrath's belt buckle was responsible for setting off the alarm. The baggage screener looked through Mr. Dasrath's carry-on bag by hand and tested it for chemicals. The screeners also asked Mr. Dasrath to remove his shoes, which they then searched and tested for chemicals as well. After this comprehensive security screening, Mr. Dasrath was cleared by airport security to proceed to gate C-91, where his flight was scheduled to depart at 4:10 p.m.

18. When Mr. Dasrath arrived at gate C-91, he checked in with the Continental gate agent to receive his boarding pass. On information and belief, the Continental gate agent recognized from Mr. Dasrath's electronic ticket that he was a "non-revenue" passenger. The agent then informed Mr. Dasrath that Flight #1218 was not full and reassigned him to a seat in the first-class section of the plane. When first-class boarding commenced, Mr. Dasrath boarded the plane and sat in his assigned seat. At no time prior to or during boarding did Mr. Dasrath speak with any other passengers.

19. The seat in front of Mr. Dasrath was occupied by a passenger who appeared to Mr. Dasrath to be of Asian descent. Mr. Dasrath did not know or recognize this passenger and never spoke with him prior to boarding or at any time while on board the plane.

20. Subsequent to Mr. Dasrath's boarding, economy-class passengers boarded the plane. Mr. Dasrath noticed that one passenger, who appeared to Mr. Dasrath to be of Indian descent, stopped briefly to greet the Asian passenger seated in front of him. This passenger then proceeded to his economy seat.

21. While the plane was parked at the gate, the Indian passenger returned to the first-class cabin and sat next to the Asian passenger he apparently knew, chatting in English in what appeared to Mr. Dasrath to be a casual, friendly manner. At no time did Mr. Dasrath converse or communicate with either of these passengers.

22. At this point, Mr. Dasrath noticed a white female passenger from coach walk into the first-class section carrying a small dog. Mr. Dasrath noticed this passenger staring suspiciously at him and the two passengers seated in front of him. She then returned to her seat. This passenger almost

immediately returned to the first-class cabin, again looked at Mr. Dasrath and the two passengers in front of him, and exited the plane with a Continental flight attendant she had approached. This passenger then returned to her seat. Within minutes, the captain of the flight announced that the plane would remain at the gate temporarily while some luggage was re-examined by security personnel.

23. Shortly thereafter, the white female passenger with the dog re-emerged in the first-class cabin and signaled to the captain, who was standing outside the cockpit. The captain walked past Mr. Dasrath and spoke with the white female passenger in the aisle, a few feet behind Mr. Dasrath's seat. Mr. Dasrath turned toward the captain and the white female passenger, at which point he saw this passenger pointing toward him and the two passengers in front of him and heard her tell the captain that these three "brown-skinned men are behaving suspiciously."

24. Mr. Dasrath was shocked both by the accusation and by the manner in which this passenger described him and the other passengers at whom she pointed. He chose to say nothing, however, assuming that the captain would exercise appropriate judgment and not react irrationally to this baseless accusation. The captain proceeded toward the cockpit and walked off the plane, staring at Mr. Dasrath and the other two passengers as he passed without addressing them.

25. Within minutes, the senior Continental gate agent boarded the plane and called out Mr. Dasrath's name and the name of the Asian passenger seated in front of him. In addition, he asked the Indian passenger his name. He then asked the three to gather their belongings and deplane. Stunned and embarrassed, Mr. Dasrath complied without speaking, as did the Asian passenger. The Indian passenger asked the gate agent why they were being asked to deplane. In response, the gate agent simply repeated his request. The agent was polite and appeared embarrassed in making this request of Mr. Dasrath and the others. On information and belief, two or three other first-class passengers watched as Mr. Dasrath and the others were escorted off the plane. Mr. Dasrath felt a deep sense of humiliation. As Mr. Dasrath exited the plane, the captain looked at him and the others from head to toe and returned to the plane without speaking. The door to the plane was then shut, and the plane departed without Mr. Dasrath.

26. On information and belief, the captain and the senior gate agent who

removed Mr. Dasrath from the flight were aware that he was a “non-revenue” passenger.

27. At no time did the captain or any security or law enforcement personnel speak to or question Mr. Dasrath or, upon information and belief, conduct any investigation into Mr. Dasrath’s conduct prior to ejecting him from this flight. The decision to remove Mr. Dasrath from this flight was made solely in reliance on the unfounded, untrue, unexamined, and discriminatory assertions of another passenger and was wholly unreasonable based on the circumstances.

28. Mr. Dasrath and the other ejected passengers returned to gate C-91. Several Continental gate agents, including the senior agent who had removed Mr. Dasrath from the flight, apologized profusely for what had occurred. Mr. Dasrath overheard one African-American Continental agent state to another in reaction to this incident that “It’s a white man’s world.”

29. Two Continental gate agents worked determinedly to find another flight on which Mr. Dasrath and the other ejected passengers could travel to Florida. They discovered that Continental Flight #1292 from Newark to Orlando had not yet departed, and Mr. Dasrath and the others were driven on a courtesy vehicle to the gate from which Flight #1292 was scheduled to depart at 5 p.m. When they arrived, the doors to the flight were closed. Mr. Dasrath explained to the Continental agents that they had been removed from Continental Flight #1218 to Tampa because of racial profiling and asked them to call the senior agent at gate C-91 who had removed them from that flight. After the supervising gate agent assigned to Flight #1292 spoke with the agent at gate C-91, she instructed another Continental gate agent to issue first-class boarding passes to Mr. Dasrath and the others for Flight #1292 and ordered that the doors to this flight be opened to permit them to board. When Mr. Dasrath asked how he would get from Orlando to Tampa, where his family awaited him, he was told that Continental would provide a car service to transport him.

30. Mr. Dasrath and the other two passengers boarded Flight #1292 to Orlando. None was subjected to any additional security screening.

31. When Mr. Dasrath arrived in Orlando, he was informed that his suitcase had not been placed on the flight to Orlando but rather had remained on Flight #1218 to Tampa. When he arrived at the Tampa airport by car, he was unable to locate his suitcase and was forced to file a lost

luggage claim with Continental.

32. By the time Mr. Dasrath arrived home, his two young sons were asleep, and it was too late to spend New Year's Eve with them, which had been the purpose of his trip. He spent the remainder of his New Year's holiday feeling disgusted, exhausted, and humiliated.

33. On January 1, 2002, Mr. Dasrath returned to the Tampa airport for his flight back to Newark. He recovered his suitcase, only to discover that it had been opened and rummaged through. The computer that he had brought as a present for his sons had been torn apart and destroyed.

34. Mr. Dasrath and his family have been deeply affected by this incident. Beyond depriving Mr. Dasrath of the opportunity to spend the holiday with his family and to give his children the gift he had brought them, the events that occurred left Mr. Dasrath feeling sickened, humiliated, and violated. They also left his wife feeling deeply betrayed by the company to which she has dedicated herself as an employee for approximately the past two years.

REQUISITES FOR RELIEF

35. By reason of the factual allegations set forth above, an actual controversy has arisen and now exists between plaintiff and defendant. A declaration from this court that defendant's actions violated plaintiff's rights is therefore necessary and appropriate.

36. Defendant's continued discriminatory conduct will result in irreparable harm to plaintiff, including but not limited to violations of his legal rights. Plaintiff has no plain, adequate, or complete remedy at law to address the wrongs described herein. Plaintiff therefore seeks injunctive relief restraining defendant from engaging in the unlawful acts and practices described above.

CLAIMS FOR RELIEF

Count I: 42 U.S.C. § 1981

Discrimination in the Making and Enforcement of Contracts

37. Plaintiff repeats and realleges paragraphs 1-36, as if set forth fully herein.

38. The pilot, flight crew, and gate agents for Continental Flight #1218 on December 31, 2001, were at all relevant times agents and/or employees of Defendant Continental Airlines, Inc.

39. Defendant is liable for the unlawful acts of its agents and employees directly and/or under the doctrine of respondeat superior.

40. Defendant engaged in intentional discrimination based on plaintiff's perceived race, color, ethnicity, and/or alienage in removing plaintiff from Continental Flight #1218 on December 31, 2001. In doing so, defendant discriminated against plaintiff in the making and enforcement of his contract with defendant, namely his ticket to travel on Continental Flight #1218 on December 31, 2001. Consequently, defendant has caused plaintiff to suffer deprivation of his right to make and enforce contracts as enjoyed by white citizens under 42 U.S.C. § 1981.

41. Defendant's actions were intentional, malicious, willful, wanton, callous, and showed reckless disregard for plaintiff's civil rights, and have directly and proximately caused plaintiff financial injury and humiliation, mental pain, and suffering.

Count II: Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d)

Discrimination by Recipient of Federal Funding

42. Plaintiff repeats and realleges paragraphs 1-41, as if set forth fully herein.

43. Defendant is the recipient of federal financial assistance, and is thus covered by Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d). Title VI and its implementing regulations prohibit recipients of federal monies from discriminating on the basis of, inter alia, race, color, or national origin. Defendant's failure to permit plaintiff to fly on its airline on the basis of plaintiff's perceived race, color, and/or national origin constituted discrimination against plaintiff in violation of Title VI and its implementing regulations.

44. Defendant's actions were intentional, malicious, willful, wanton, callous, and

showed reckless disregard for plaintiff's civil rights, and have directly and proximately caused plaintiff financial injury and humiliation, mental pain, and suffering.

Count III: N.J.S.A. 10:5-1, et seq.

**New Jersey Law Against Discrimination:
Unlawful Deprivation of Access to and/or Discrimination in Furnishing of a Public
Accommodation and/or Public Facility**

45. Plaintiff repeats and realleges paragraphs 1-44 as if set forth fully herein.
46. Continental Flight #1218, from which plaintiff was removed on December 31, 2001, is a "place of public accommodation" within the terms of the New Jersey Law Against Discrimination. N.J.S.A. 10:5-5(1).
47. The pilot, flight crew, and gate agents for Continental Flight #1218 on December 31, 2001, were at all relevant times agents and/or employees of Defendant Continental Airlines, Inc.
48. Defendant is liable for the unlawful acts of its agents and employees directly and/or under the doctrine of respondeat superior.
49. Defendant removed plaintiff from Continental Flight #1218 on December 31, 2001, based on plaintiff's perceived race, color, ancestry, and/or national origin in removing plaintiff from Continental Flight #1218 on December 31, 2001. Defendant's acts violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.
50. Defendant's actions were intentional, malicious, willful, wanton, callous, and showed reckless disregard for plaintiff's civil rights, and have directly and proximately caused plaintiff financial injury and humiliation, mental pain, and suffering.

PRAYER FOR RELIEF

51. WHEREFORE, plaintiff requests that this Court:
 - (a) Declare that the actions of defendant described above constituted discrimination

on the basis of race, color, ethnicity, alienage, ancestry, and/or national origin in violation of 42 U.S.C. § 1981, 42 U.S.C. § 2000d, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.;

- (b) Enter a permanent injunction directing defendant and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;
- (c) Award plaintiff compensatory damages in an amount to be determined at trial for the plaintiff's loss and injury including, but not limited to, economic losses, humiliation, embarrassment, emotional distress, and a deprivation of his right to enter and enforce a contract and to travel as a passenger in air transportation regardless of his race, color, ethnicity, alienage, ancestry, or national origin;
- (d) Award plaintiff punitive damages in an amount to be determined at trial that would punish defendant for its willful, wanton, and reckless conduct and that would effectively deter defendant from engaging in similar conduct in the future;
- (e) Order defendant to cease and desist from all future discrimination or retaliation against plaintiff;
- (f) Award plaintiff prejudgment interest;
- (g) Award reasonable attorneys' fees and the costs incurred in this action; and
- (h) Award such other relief as the Court deems appropriate and just.

Respectfully submitted,

Edward Barocas
John C. Salyer
AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY
35 Halsey Street, Suite 4B
Newark, NJ 07102
(973) 642-2084

Reginald T. Shuford

E. Vincent Warren
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street
New York, NY 10004
(212) 549-2500