

AMERICAN CIVIL LIBERTIES UNION
OF NEW JERSEY

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EDGARDO S. CUREG, and)	Civil Action No.:
)	
THE AMERICAN ARAB ANTI-)	
DISCRIMINATION COMMITTEE, on behalf)	COMPLAINT FOR
of its members and its constituents,)	DECLARATORY AND
)	INJUNCTIVE RELIEF
)	
Plaintiffs,)	
)	
vs.)	
)	
CONTINENTAL AIRLINES, INC.,)	
)	
)	
Defendant.)	
_____)	

Plaintiffs Edgardo S. Cureg and the American-Arab Anti-Discrimination Committee, by and through their counsel, American Civil Liberties Union and American Civil Liberties Union of New Jersey, as and for their Complaint allege the following:

NATURE OF THE CASE

1. Edgardo S. Cureg and the American-Arab Anti-Discrimination Committee (ADC) bring this action seeking declaratory and injunctive relief against Continental Airlines for unlawful discrimination. In the manner described herein, agents of the defendant unlawfully removed Mr. Cureg from one of its flights, for which he had purchased a valid ticket from the defendant, on the basis of his perceived race, color, ethnicity, alienage, ancestry, and/or national origin. Defendant also has treated members and constituents of the ADC in like fashion. 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. Plaintiffs seek 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. Plaintiffs' action for declaratory and injunctive 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 plaintiffs' 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 Edgardo Cureg was kicked off a flight for which he had purchased 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. Cureg's removal from his flight, has effectively conceded that its actions were not based on legitimate security considerations: following Mr. Cureg'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. Cureg brings this suit to ensure that he will never again be subjected to similar unlawful and humiliating treatment by Continental Airlines, and he is joined in this action by the ADC, which seeks similar relief on behalf of its members and its constituents.

THE PARTIES

Plaintiffs

8. Plaintiff Edgardo S. Cureg is a thirty-four year Filipino citizen and has been a permanent resident of the United States since April 2000. Mr. Cureg has been a full-time Ph.D. student in mathematics at the University of South Florida-Tampa since Fall 2000. He resides and owns a home in Tampa.

9. Mr. Cureg has two undergraduate degrees. He received a degree in mathematics from the University of the Philippines in 1998 and a degree in engineering from Toyohashi University of Technology in Japan in 1994.

10. In addition to his studies at USF, Mr. Cureg worked as a mathematics teaching assistant from Fall 2000 through Fall 2001. As part of the Federal Work-Study Program, Mr. Cureg also worked as a graduate assistant in the College of Arts and Sciences from Fall 2000 through Spring 2001. Thereafter, Mr. Cureg received a graduate research fellowship from the National Science Foundation and opted not to teach.

11. Mr. Cureg's mother and sister, both of whom also reside in Florida, are United States citizens.

12. Plaintiff ADC is a non-sectarian, non-partisan organization dedicated to defending the rights of people of Arab descent and to combating defamation and negative stereotyping of Arab Americans wherever they are practiced. Its thousands of members and constituents fly on all major airlines, including Continental Airlines, on a regular basis, and at various times have been subjected to discriminatory practices similar to those described herein. Since September 11, the ADC has documented more than 60 incidents of alleged discrimination against Arab Americans by domestic and foreign airlines. The ADC brings this action as organizational representative for its members and constituents who have been and may continue to be subjected to discrimination by Continental Airlines.

Defendant

13. 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.

14. 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

15. On December 31, 2001, Edgardo Cureg arrived at London-Gatwick Airport for an 11:00 a.m. flight (#29) to Newark International Airport, which was due to arrive at 2:00 p.m. Mr. Cureg's ultimate destination was Tampa, Florida, and the flight (#1218) from Newark to Tampa was scheduled to depart at 4:10 p.m. and to arrive at 7:05 p.m.

16. Mr. Cureg was returning from a trip to London, where he had arrived on December 15. While in London, Mr. Cureg visited friends and the usual tourist attractions. He also attempted to contact a number of professors with whom to collaborate on his future post-doctoral

studies, but was unsuccessful because the schools he visited were closed for the holiday break. Mr. Cureg planned to arrive in Tampa early enough to relax and enjoy a New Year's Eve party with his family and friends, which was scheduled to start at 10:00 p.m. at his sister's home in Brandon, FL.

17. Mr. Cureg is a frequent flyer with Northwest Airlines and has Silver Elite status with that airline. Silver Elite status is granted to passengers who fly at least 25,000 miles per year. Northwest Airlines is in partnership with Continental Airlines. As such, Mr. Cureg's privileges with Northwest Airlines apply when he flies domestically with Continental. For example, on the trip in question, Mr. Cureg was upgraded to first class on the December 15 flight from Tampa to Newark, and on the December 31 flight from Newark to Tampa.

18. At London-Gatwick, on his way to board the plane, Mr. Cureg heard someone call out to him. It was his colleague, Dr. Saraleesan Nadarajah, a mathematics professor at USF. Dr. Nadarajah had been visiting his parents, who live in London.

19. Mr. Cureg and Dr. Nadarajah spoke briefly before boarding the plane. They did not talk on the plane, as they were seated in different sections.

20. The flight from London to Newark was uneventful. Prior to deplaning, Mr. Cureg placed a call to a friend confirming their plan to go together to a New Year's Eve party that evening being held at the home of Mr. Cureg's sister. This friend is also a good friend and university colleague of Dr. Nadarajah. When Mr. Cureg informed him that he and Dr. Nadarajah were on the same flight, the friend mentioned that he would like to speak with Dr. Nadarajah.

21. Upon deplaning at Newark, Mr. Cureg, who had one carry-on bag and two bags which had been checked on the flight from London, was required to pass through Customs.

22. At Customs, each of Mr. Cureg's bags was searched. Mr. Cureg was patted down, and it took about thirty minutes to get through Customs. Several people, including Dr. Nadarajah, also were patted down and/or had their luggage searched.

23. After clearing Customs, Mr. Cureg was required to re-check his suitcase. Upon information and belief, this re-checking requirement is part of the protocol with international flights.

24. Mr. Cureg then proceeded through the domestic security checkpoint without

incident.

25. While waiting at the gate to board the flight to Tampa, Mr. Cureg telephoned a friend on his cell phone. At the end of this conversation, Mr. Cureg saw Dr. Nadarajah arrive at the gate. The two of them began chatting. Mr. Cureg then remembered the earlier conversation in which their mutual friend stated that he would like to speak with Dr. Nadarajah. Mr. Cureg mentioned the conversation with their mutual friend and offered the use of his cell phone to Dr. Nadarajah to call him back.

26. While Dr. Nadarajah was using Mr. Cureg's phone, an announcement was made for all first-class passengers to begin boarding. Mr. Cureg began boarding, and told Dr. Nadarajah that he could return the phone when he boarded the plane.

27. Mr. Cureg sat on the left side of the first-class cabin near the front of the plane. He settled in and began reading. Approximately ten minutes later, Dr. Nadarajah boarded the plane and returned the phone. He said, "Thank you," to which Mr. Cureg responded, "You're welcome." Because other passengers were behind Dr. Nadarajah, the men did not engage in further conversation, and Dr. Nadarajah proceeded to his seat in the coach cabin. Mr. Cureg made calls to friends and family, informing them of his safe arrival in the United States, confirming the time of his expected arrival in Tampa, and wishing them a Happy New Year.

28. Approximately fifteen to twenty minutes later, the pilot announced that the flight would remain at the gate temporarily while some luggage was re-examined by security personnel.

29. After the announcement, Dr. Nadarajah came to the first-class cabin and sat in the empty seat beside Mr. Cureg. A passenger later identified as Michael Dasrath sat in the seat directly behind Mr. Cureg. Neither Mr. Cureg nor Dr. Nadarajah knew Mr. Dasrath, and at no time did they speak with him or communicate with him in any way.

30. Once Dr. Nadarajah sat down next to Mr. Cureg, the two began chatting about mathematics. Their conversation was in English.

31. Between three to five minutes later, the flight supervisor approached and read the names of Mr. Cureg and Michael Dasrath off parts of their boarding passes. He asked Dr.

Nadarajah his name and then asked the three men to gather all of their belongings and to follow him off of the airplane.

32. Believing it was just a misunderstanding, Mr. Cureg followed the flight supervisor off the airplane without saying anything. Mr. Dasrath and Dr. Nadarajah also exited the plane. The flight supervisor explained that the pilot had stated that a passenger was uncomfortable with their presence. The supervisor appeared embarrassed.

33. At the check-in counter, the flight supervisor asked the men for identification and for their boarding passes. He then confirmed with the ticket agents, using their computer, that Mr. Cureg and Dr. Nadarajah had been on the flight from London.

34. Given all the security measures involved with international flights, the flight supervisor appeared convinced that Mr. Cureg and Dr. Nadarajah had been through more security than just about everyone on the plane.

35. The flight supervisor left for about five minutes to speak with the pilot on the plane. He tried to convince the pilot that the three men presented absolutely no safety concerns. He apparently failed, and was very apologetic upon his return. Upon information and belief, he told the men that if they decided to pursue this matter legally, he would be supportive.

36. At no time did the captain or any security or law enforcement personnel speak to or question Mr. Cureg, or, upon information and belief, conduct any investigation into Mr. Cureg's conduct prior to ejecting him from this flight. The decision to remove Mr. Cureg 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.

37. Two Continental gate agents worked determinedly to find another flight on which Mr. Cureg, Dr. Nadarajah, and Mr. Dasrath could travel to Florida. They offered to place the men on the earliest flight the next morning. Mr. Cureg, Dr. Nadarajah, and Mr. Dasrath refused, however, stating that they did not want to spend New Year's Eve apart from their families and friends in Florida.

38. The ticket agents appeared incredulous and disgusted about what had happened.

39. The gate agents discovered that Continental Flight #1292 from Newark to

Orlando had not yet departed, and Mr. Cureg and the others were driven on a courtesy vehicle to the gate from which Flight #1292 was scheduled to depart at 5:00 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 the Tampa flight for confirmation. 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. Cureg and the others for Flight #1292. She then instructed that the doors to this flight be opened to permit Mr. Cureg and the others to board. When Mr. Dasrath asked how he and Mr. Cureg would get from Orlando to Tampa, he was told that Continental would provide a car service to transport them. Dr. Nadarajah was being picked up by a student.

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

41. The flight landed in Orlando shortly after 8:00 p.m. Mr. Cureg obtained his luggage from the carousel. It had been removed from the Tampa flight and transferred to the Orlando flight. Upon information and belief, Mr. Cureg's luggage was not subjected to an additional search upon being removed from the Tampa flight and placed on the Orlando flight.

42. Mr. Cureg and Mr. Dasrath were then driven by car service to the Tampa Airport. The ride from Orlando took about an hour and fifteen minutes. Mr. Cureg arrived at home at approximately 11:30 p.m., roughly three and a half hours after he was originally scheduled to arrive home. Upset by what had happened and expecting to be late at any rate, he decided to miss the party. He ended up spending New Year's Eve alone.

43. Mr. Cureg has been deeply affected by this incident. Beyond ruining what had been a nice vacation, the events that occurred left Mr. Cureg feeling demeaned, humiliated, and violated.

44. As a frequent flyer with Northwest Airlines, and by extension, its partners, including Continental Airlines, Mr. Cureg fears similar mistreatment when flying with Continental Airlines in the future unless such conduct is enjoined. Mr. Cureg's fear is reasonable because he travels by air

frequently, and because defendant has engaged in a practice of removing certain non-white passengers.

45. Members and constituents of the ADC also have been and may continue to be subjected to defendant Continental Airlines' discrimination against those perceived to be Arab Americans.

46. The ADC's members and constituents fly regularly on all major airlines, including Continental Airlines. By way of example, the ADC conducts an annual conference for members and constituents who travel from across the country to participate. Last year's conference was held near Washington, D.C., and approximately 2000 people attended. This year's conference will be held in Washington, D.C., in June, and at least 2000 people are expected to attend. On information and belief, as in the past, some of the conferees will fly Continental Airlines.

47. The Board of Directors of the ADC has 15 board members who fly on a regular basis around the country. The ADC's staff members likewise fly on a regular basis. These board and staff members use all the major airlines, including Continental Airlines.

48. The thousands of members and constituents of the ADC will continue to fly on Continental Airlines, and they accordingly seek this Court's assurance that Continental Airlines will be enjoined to take all necessary steps to ensure that its employees comply with federal and state anti-discrimination laws. Such assurance is necessary because the ADC's members and constituents face a likelihood of being subjected to discriminatory treatment in the future as a result of their continuing travel on Continental Airlines, and defendant's practice of discrimination against passengers it perceives to be Arab or Muslim.

REQUISITES FOR RELIEF

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

50. Defendant's continued discriminatory conduct will result in irreparable harm to

plaintiffs, including but not limited to violations of their legal rights. Plaintiffs have no plain, adequate, or complete remedy at law to address the wrongs described herein. Plaintiffs therefore seek 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

51. Plaintiffs repeat and reallege paragraphs 1-50, as if set forth fully herein.

52. 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.

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

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

55. Defendant's actions were intentional and done in violation of plaintiff Mr. Cureg's civil rights and have directly and proximately caused him humiliation, mental pain, and suffering.

56. Defendant's similar actions against members and constituents of the ADC were intentional and done in violation of their civil rights and have directly and proximately caused them 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

57. Plaintiffs repeat and reallege paragraphs 1-56, as if set forth fully herein.
58. 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.
59. Defendant's failure to permit plaintiff Mr. Cureg to fly on defendant's airline on the basis of his perceived race, color, and/or national origin constituted discrimination against plaintiff in violation of Title VI and its implementing regulations.
60. Defendant's failure to permit members and constituents of the ADC to fly on its airline on the basis of their perceived race, color, and/or national origin constituted discrimination against them in violation of Title VI and its implementing regulations.

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**

61. Plaintiffs repeat and reallege paragraphs 1-60, as if set forth fully herein.
62. Continental Flight #1218, from which plaintiff Mr. Cureg 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).
63. 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.
64. Defendant is liable for the unlawful acts of its agents and employees directly and/or under the doctrine of respondeat superior.
65. Defendant removed plaintiff Mr. Cureg from Continental Flight #1218 on December 31, 2001, based on plaintiff Mr. Cureg's perceived race, color, ancestry, and/or national origin. Defendant's acts violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.
66. Defendant's actions were intentional and done in violation of plaintiff Mr. Cureg's

civil rights and have directly and proximately caused plaintiff Mr. Cureg humiliation, mental pain, and suffering.

67. Defendant's similar actions against members and constituents of the ADC were intentional and done in violation of their civil rights and have directly and proximately caused them humiliation, mental pain, and suffering.

PRAYER FOR RELIEF

68. WHEREFORE, plaintiffs requests that this Court:

- (a) Declare that the actions of defendant described above constituted discrimination on the basis of plaintiff Mr. Cureg's perceived 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 the 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) Order defendant to cease and desist from all future discrimination or retaliation against plaintiffs;
- (d) Award reasonable attorneys' fees and the costs incurred in this action; and
- (e) Award such other relief as the Court deems appropriate and just.

Respectfully submitted,

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