

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STEVEN BIERFELDT  
3854 Florence Drive, Apartment 5  
Alexandria, VA 22305,

Plaintiff,

v.

JANET NAPOLITANO, in her official capacity as  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528,

Defendant.

No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
(Violation of Fourth Amendment Rights)**

1. On March 29, 2009, Plaintiff Steven Bierfeldt was seized by Transportation Security Administration (“TSA”) officials, subjected to a harassing interrogation, and unlawfully detained. This extensive intrusion into Mr. Bierfeldt’s liberty occurred even though TSA officials had absolutely no reason to believe that he posed a safety threat and no reasonable suspicion that illegal activity was afoot. Rather, Mr. Bierfeldt was unlawfully detained because he possessed approximately \$4700 in cash, which he was transporting in connection with his duties as the treasurer of a national political organization.

2. Carrying \$4700 in cash poses no conceivable threat to flight safety. But as the detention and interrogation of Mr. Bierfeldt made clear, the safety of civil aviation did not motivate TSA’s conduct. Instead, TSA agents believed they had authority to conduct a freewheeling investigation of Mr. Bierfeldt. By subjecting Mr. Bierfeldt to a prolonged and

unauthorized detention, Defendant violated Plaintiff's rights under the Fourth Amendment and exceeded her statutory authority.

3. It is well established that subjecting airline passengers to limited searches designed to detect weapons and explosives is consistent with the Fourth Amendment. But it is equally clear that such search authority constitutes a narrow exception to the Fourth Amendment's basic prohibition of suspicionless searches, and that authority is carefully circumscribed to serve its limited purpose. As a matter of policy or practice, however, TSA has attempted to enlarge its authority, untethering it from the pressing but limited purpose of protecting civilian aviation.

4. Plaintiff's experience was not an anomaly. Whether as a matter of formal policy or widespread practice, TSA now operates on the belief that airport screening provides a convenient opportunity to fish for evidence of criminal conduct far removed from the agency's mandate of ensuring flight safety. Mr. Bierfeldt faces a particularly strong risk of suffering future unconstitutional seizures or searches. His employment as Director of Development for a national political organization requires that he engage in frequent commercial air travel, often carrying sums of cash comparable to the amount that has previously induced Defendant to subject him to an unconstitutional detention.

5. To prevent future constitutional violations, Mr. Bierfeldt seeks injunctive and declaratory relief to ensure that TSA's search policy does not exceed the scope permitted by the Fourth Amendment to the U.S. Constitution and authorized by Congress.

## **PARTIES**

6. Plaintiff Steven Bierfeldt is a resident of Alexandria, Virginia. He is the Director of Development of the Campaign for Liberty ("the Campaign"), a national political organization.

The Campaign was founded to promote and defend principles of individual liberty, constitutional government, sound money, free markets, and a non-interventionist foreign policy. It grew out of the grassroots movement supporting the 2008 presidential campaign of Representative Ron Paul. In connection with his duties as Director of Development—which involves primary responsibility for the organization’s fundraising efforts—Mr. Bierfeldt frequently travels to events around the country, often transporting significant sums of cash derived from sales of tickets to Campaign events as well sales of t-shirts, stickers, and political literature.

7. Defendant Janet Napolitano is Secretary of the Department of Homeland Security. The TSA is a component of the Department of Homeland Security, thus Defendant has authority over TSA’s policies and responsibility for ensuring its compliance with all legal requirements. Defendant is sued in her official capacity.

#### **JURISDICTION AND VENUE**

8. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

#### **FACTUAL ALLEGATIONS**

##### TSA’s Limited Administrative Search Authority

11. TSA is responsible for providing security for commercial air travel.

12. TSA is obligated by statute to provide for the screening of all passengers and property that will be carried aboard passenger aircraft operated by domestic or foreign air carriers in the United States. This obligation includes ensuring a uniform procedure for

searching and detaining passengers that, in addition to promoting safety, treats passengers appropriately.

13. The search authority entrusted to TSA is not open-ended. Rather, it is circumscribed to allow suspicionless searches only to the extent that they are reasonably designed to detect weapons and explosives that may pose a threat to air safety. TSA is authorized by statute to promulgate screening regulations designed to protect passengers and property on an aircraft against an act of criminal violence or aircraft piracy.

14. TSA possesses authority under federal law to deputize local law enforcement officers to implement the passenger screening process.

15. Officers deputized by TSA are treated as federal law enforcement officers for purposes of meeting the requirements of TSA's statutory duties. They are also treated as federal officers for purposes of assessing liability for actions undertaken pursuant to any deputation agreement with TSA.

#### The Search and Detention of Plaintiff

16. On March 25, 2009, Mr. Bierfeldt traveled to St. Louis, Missouri for the Campaign's regional conference. After spending several days attending events and helping to coordinate the conference, he set out to return home on March 29, 2009. Mr. Bierfeldt was carrying a money box containing about \$4700 in cash, which was derived from sales of tickets, t-shirts, bumper stickers, and other Campaign paraphernalia.

17. Mr. Bierfeldt checked in at the ticket counter and proceeded to the screening checkpoint. He removed his laptop from its case for purposes of x-ray screening and passed the laptop's carrying case through the machine separately. The laptop carrying case contained

several books, a Bible, copies of the U.S. Constitution, political stickers, Campaign for Liberty material, and other personal items; it also included the money box containing proceeds from the regional conference.

18. Once Mr. Bierfeldt's bags passed through the x-ray machine, a TSA agent carried the laptop bag to a separate table a few feet away and instructed Mr. Bierfeldt to follow. The agent searched Plaintiff's bag and eventually removed the money box. The agent then stated that he intended to look through the box. Mr. Bierfeldt politely queried the agent about his intentions, including whether the agent was detaining his personal property. Instead of answering Mr. Bierfeldt's questions, the agent picked up the money box and began walking away from the table. He ordered Mr. Bierfeldt to follow. Based on that order, and because Mr. Bierfeldt did not want the box containing the Campaign's cash proceeds to be removed from his supervision, he felt compelled to follow the agent. The agent did not seek or obtain Plaintiff's consent to take custody of the cash box.

19. The agent led Mr. Bierfeldt to a small enclosed room near the screening area. The room was separated from the concourse by a closed door. A second TSA agent was stationed inside the room.

20. At this point, Mr. Bierfeldt understood that he and his belongings were being detained by the TSA. Plaintiff activated a feature of his cellular telephone that functions as an audio recorder. Mr. Bierfeldt had never before made an audio recording of a conversation or an encounter with law enforcement. However, he believed in this instance that he faced the possibility of infringement of his constitutional rights, and he wanted to document any violations.

21. Mr. Bierfeldt was thereafter subjected to a series of harassing questions. During this time, he did not feel that he was free to leave, and the agents detaining him maintained possession of the money box and its contents. He responded to the agents' questions by politely but steadfastly asking the agents to explain the scope of their authority to detain and interrogate him. Rather than assent to this basic request, the agents escalated the threatening tone of their questions and ultimately told Mr. Bierfeldt that he was being placed under arrest.

22. The TSA agent who initially detained Mr. Bierfeldt began by asking his destination, and Mr. Bierfeldt responded truthfully that he was traveling to Reagan National Airport. The agent then asked Mr. Bierfeldt his occupation. Plaintiff inquired whether he was legally required to answer that question. The TSA agent responded: "Well I'll tell you what. . . . You might not be legally required to tell me that but you will be legally required to tell the police officer who will come talk to you. I'm just trying to ask some questions to figure out what all this is about so I can get you on your plane. But you want to play smart ass, and I'm not going to play your f---ing game."

23. Shortly thereafter, a police officer entered the room. He was in uniform and carried a firearm, and he identified himself as Officer Shelton. He stood between Mr. Bierfeldt and the door, which was closed. Eventually a second police officer, also displaying a firearm, entered the room.

24. On information and belief, both of these police officers were acting pursuant to deputation agreements with the TSA.

25. Throughout this period of detention and interrogation, Plaintiff was asked a series of questions that bore no relevance to pre-flight safety screening. These questions included inquiries into his employment, the source of the money in his possession, and the purpose of his

trip to St. Louis. Consistently, Mr. Bierfeldt asked whether he was required by law to provide answers, while making clear that he would comply with any legal requirements. With equal consistency, the TSA-led interrogation team refused to inform Plaintiff of his legal rights and obligations, and instead berated him for seeking clarification of his legal status. The following exchange is typical of Mr. Bierfeldt's attempts to discern the scope of his obligation to comply with the agents' interrogation:

**Agent:** Is there a reason you're not answering any questions –  
**Bierfeldt:** I'm not refusing to answer any –  
**Agent:** I want you to see it from my – from what we're seeing, you come in with some money but you don't want to answer any questions about how much it is that's in your possession.  
**Bierfeldt:** I don't know.  
**Agent:** Is it a secret why you have the money or something?  
**Bierfeldt:** I don't know the exact amount – you're asking where my employment is, I'm simply asking whether I'm legally required to answer –  
**Agent:** Well may I ask, the question is, why do you have this money? That's the question, that's the major question.  
**Bierfeldt:** Yes sir, and I'm asking whether I'm legally required to answer that question.  
**Agent:** Answer that question first, why do you have this money?  
**Bierfeldt:** Am I legally required to answer that question?  
**Agent:** So you refuse to answer that question?  
**Bierfeldt:** No sir, I'm not refusing.  
**Agent:** Well you're not answering.  
**Bierfeldt:** I'm simply asking my rights under the law.  
**Agent:** I'm asking you a question and in return you're asking me a question. You're not answering it.

26. Mr. Bierfeldt was also repeatedly threatened with the prospect of transfer to the custody of other law enforcement agencies, including the Drug Enforcement Administration.

Again, the following exchange is typical:

**Agent:** Why do you have all this money?  
**Bierfeldt:** That's my, I asked you sir, am I required by law to answer the question.

**Agent:** I'm just asking you why you have \$4700?  
**Bierfeldt:** That's my question, I don't understand the law.  
**Agent:** You want to talk to DEA about it? They'll probably ask you more questions.  
**Bierfeldt:** If they can tell me if I'm required to answer by law the question, I'll answer the question. I'm just looking for a simple yes or no.  
**Agent:** It's just a simple question. I just want to know why you have \$4700 on you, that's not a usual thing. . . .  
**Second Agent:** He's refusing to answer any questions, he don't want to answer so, we [sic] gonna have to take him down to the station.  
**Agent:** I mean yeah, that's suspicious.  
**Second Agent:** DEA, FBI, and all those –  
**Agent:** Every one of them.  
**Second Agent:** So we can do that.

27. Eventually, the agents interrogating Mr. Bierfeldt told him he was being placed under arrest. One agent said Plaintiff's queries regarding his legal status were "confusing to me, so we're just going to take you to the station and DEA can find out." When Plaintiff asked where exactly he would be taken, the agent responded: "You're going to the police station." Mr. Bierfeldt then asked whether he was "being forced to go to the police station" or was "free to go." After initially brushing aside that question as "semantics," the agent responded: "Yes you're going to the station, you'll be forced, that's fine. . . . You're being detained, yes." Faced with this order, Mr. Bierfeldt began to gather his belongings and prepared to submit to arrest.

28. The agents in the room began leading Mr. Bierfeldt through the concourse to "the station." As they proceeded, a plainclothes agent summoned them back to the interrogation room. The plainclothes agent never identified which agency he represented.

29. Noticing items in Mr. Bierfeldt's possession identifying the Campaign for Liberty, the plainclothes agent asked whether the money represented campaign contributions. Plaintiff responded, "Yes sir, the money says it's for Campaign for Liberty." The plainclothes



agent then stated: “You’re free to go.” Even after this pronouncement, Officer Shelton continued to detain Mr. Bierfeldt for several more minutes while the TSA agent who initially detained him sought approval from his supervisor to clear Mr. Bierfeldt to proceed to his flight. Once the TSA officer obtained that approval, Plaintiff was released.

#### TSA’s Policy or Practice of Conducting Law Enforcement Searches

30. The treatment Mr. Bierfeldt received reflects TSA policy. As TSA’s general counsel has stated on the agency’s official website, it is standard practice for TSA agents to “ask a passenger who is carrying a large sum of cash to account for the money.” Because TSA believes that its mission includes detecting “signs of criminal activity,” a TSA officer who observes “a large sum of money . . . will frequently engage in dialog with the passenger to determine whether a referral to law-enforcement authorities is warranted.”

31. Frontline TSA agents are instructed as a matter of standard operating procedure to search for “contraband” beyond weapons and explosives.

32. On information and belief, TSA agents have received no policy, protocol, or training directing them to limit their search authority to detecting weapons or explosives.

33. On information and belief, local law enforcement officers working in conjunction with TSA agents—through deputation agreements or informally—receive no policy, protocol, or training directing them to limit their search authority to detecting weapons or explosives.

34. Absent declaratory and injunctive relief from this Court, it is likely that Mr. Bierfeldt will again be subjected to unconstitutional searches and seizures by TSA agents and/or its deputies because Mr. Bierfeldt frequently travels by airplane throughout the country carrying cash as part of his duties as Director of Development of the Campaign for Liberty.

## **CLAIMS**

### **FIRST CLAIM FOR RELIEF:**

#### **FOURTH AMENDMENT TO THE U.S. CONSTITUTION – UNCONSTITUTIONAL SEARCH AND SEIZURE**

35. The detention and interrogation of Plaintiff by Defendant's agents constituted an unreasonable search and seizure under the Fourth Amendment to the United States Constitution.

36. The detention and interrogation of Plaintiff by Defendant's agents was conducted pursuant to a policy, practice, or custom that violates the Fourth Amendment to the United States Constitution.

### **SECOND CLAIM FOR RELIEF:**

#### **5 U.S.C. §§ 702, 706 – UNLAWFUL EXERCISE OF AGENCY AUTHORITY**

37. The detention and interrogation of Plaintiff by Defendant's agents exceeded Defendant's statutory authority to protect civil aviation by screening passengers for weapons and explosives.

38. The detention and interrogation of Plaintiff by Defendant's agents was conducted pursuant to a policy, practice, or custom that exceed Defendant's statutory authority to protect civil aviation by screening passengers for weapons and explosives.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Declare that the actions of Defendant's agents described in this Complaint violated Plaintiff's rights under the Fourth Amendment to the United States Constitution and exceeded her statutory authority;
- b. Permanently enjoin Defendant, her officers, agents, servants, employees, and all persons in active concert or participation with her who receive actual notice of the injunction, from authorizing or conducting suspicionless pre-flight searches of passengers or their belongings for items other than weapons and explosives;
- c. Award to Plaintiff his reasonable attorneys' fees, costs, and expenses of litigation; and
- d. Order such other relief as the Court may deem just and proper.

Dated: June \_\_\_\_, 2009

Respectfully submitted,

Ben Wizner  
Jameel Jaffer  
American Civil Liberties Union Foundation  
125 Broad Street  
New York, NY 10004  
Tel: (212) 549-2500  
Fax: (212) 549-2654  
bwizner@aclu.org

/s/ Arthur B. Spitzer

Arthur B. Spitzer (D.C. Bar. No. 235960)  
American Civil Liberties Union  
of the National Capital Area  
1400 20th Street, N.W., Suite 119  
Washington, D.C. 20036  
Tel: (202) 457-0800  
Fax: (202) 452-1868

/s/ Alan Gura

Alan Gura (D.C. Bar No. 453449)  
Gura & Possessky, PLLC  
101 N. Columbus Street, Suite 405  
Alexandria, VA 22314  
Tel: (703) 835-9085  
Fax: (703) 997-7665

Scott Michelman  
Allen Hopper  
American Civil Liberties Union Foundation  
1101 Pacific Avenue, Suite 333  
Santa Cruz, CA 95060  
Tel: (831) 471-9000  
Tel: (831) 471-9676

Counsel for Plaintiff