

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AMERICAN-ARAB ANTI- )  
DISCRIMINATION COMMITTEE, )  
NATIONAL LAWYERS GUILD, )  
TAREEF KAWA, DAN )  
KESSELBRENNER, and )  
GABRIEL CAMACHO ) CIVIL ACTION NO.  
 )  
Plaintiffs, )  
v. )  
 )  
MASSACHUSETTS BAY )  
TRANSPORTATION AUTHORITY, )  
 )  
Defendant )

COMPLAINT

I. INTRODUCTION

1. The individual plaintiffs bring this class action seeking declaratory and injunctive relief on their own behalf and on behalf of a class of similarly situated individuals who use the MBTA system. The organizational plaintiffs seek the same relief on behalf of their members.
2. The plaintiffs seek injunctive relief protecting them from unreasonable seizures of their persons and searches of their briefcases, bags, backpacks, and other parcels, before riding on the MBTA system. Plaintiffs further seek a declaration that the proposed search policy of the MBTA is unconstitutional under the Fourth and Fourteenth Amendments to the United States Constitution.
3. On July 16, 2004, the MBTA Transit Police issued a General Order instituting a policy whereby passengers will be required to submit their baggage for inspection, absent any

indicia of cause, before riding on the MBTA transit system. The policy calls for searches to be conducted in one of three ways: by electronic device, by explosive-sniffing dog or by physical search. The physical search provision authorizes the MBTA police not only to look into passengers' bags, but also to remove items from their bags and to open any smaller containers inside passengers' bags.

4. The searches constitute an unwarranted invasion of privacy, particularly the physical searches, which will result in passengers having to allow the police to go through their belongings and display them in front of other passengers as a condition of utilizing mass transportation.
5. The policy is facially unreasonable under the Fourth Amendment. The illusion of safety created by the policy will not outweigh the severe intrusion on civil liberties occasioned by its implementation.

#### n. JURISDICTION AND VENUE

6. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343.
7. Venue is proper in this court under 28 U.S.C. §1391(b).

#### m. PLAINTIFFS

8. Plaintiff AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE ("ADC"), a non-profit corporation, is a civil rights association with members of all backgrounds, faiths and ethnicities, committed to defending the rights of people of Arab descent and promoting their rich cultural heritage. Recognizing that the Arab-American community needs a powerful, effective national and local organization to defend its interests now more than ever, ADC is committed to empowering Arab Americans, defending the civil rights of all people, promoting civic participation, encouraging a balanced U.S. foreign policy in the Middle East, and supporting freedom and development in the Arab World. The Massachusetts chapter of ADC has over 300 members.
9. Plaintiff TAREEF KAWAF is a member of the American-Arab Anti-Discrimination Committee. He brings this action on his own behalf, on behalf of the members of ADC, and on behalf of all persons who utilize the MBTA system.
10. Plaintiff NATIONAL LAWYERS GUILD ("the Guild"), a non-profit corporation, is a national voluntary association of lawyers, law students, legal workers and jailhouse lawyers of America dedicated to the need for basic change in the structure of our political and economic system. The Guild considers the law to be an instrument for the protection of the people, rather than for their repression. Thus, during its 65 year history, the Guild has been an important part of the American people's struggle for real democracy, for economic and social justice, and against oppression and discrimination based on race, ethnicity, immigration status, class, gender or sexual orientation. In its continuing mission, the Guild seeks to safeguard and extend the rights of workers and minority groups, eliminate racism, and protect civil rights and liberties in the face of persistent attacks upon

them. Across the United States, Guild members are demanding that civil liberties be protected and that the U.S. Government respect the Constitution. The Massachusetts chapter of the Guild has over 300 members.

11. Plaintiff DANIEL KES SELBRENNER is a member of the National Lawyers Guild. He brings this action on his own behalf on behalf of the members of the NLG, and on behalf

of all persons who utilize the MBTA system.

12. Plaintiff GABRIEL CAMACHO is a participant in Project Voice, a project of the American Friends Service Committee (the "AFSC"). The AFSC is a Quaker organization committed to social justice, peace, and humanitarian service. Since its founding, AFSC has stood with immigrants and refugees to defend their rights and dignity, regardless of status. Project Voice, a project of the AFSC, combines local and national organizing, education, and outreach campaigns to strategically impact key immigration and refugee issues ranging from legalization and abuse of authority to community relations and workers' rights. In the Greater Boston area. Project Voice represents over 235,800 immigrants, and has direct contact at the neighborhood level with a constituency of more than 5000. A large portion of the Project Voice's base building work in the Boston area is done with these immigrant communities on workers rights issues, and specifically with Arab and Muslim communities on civil and human rights issues. Plaintiff Camacho brings this action on his own behalf and on behalf all persons who utilize the MBTA system.

#### IV. DEFENDANT

13. Defendant MASSACHUSETTS BAY TRANSPORTATION AUTHORITY ("MBTA") is a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts with the capacity to be sued. See M.G.L.A. c. 161A §§2, 21.

#### V. CLASS ALLEGATIONS

14. Individual plaintiffs KAWAF, KESSELBRENNER and CAMACHO bring this action on behalf of themselves and all persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class proposed by plaintiffs consists of all users of the MBTA system.

15. The requirements of Rule 23(a) and (b)(2) are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately represent the interests of the class because they are represented by counsel with extensive experience in class action litigation and constitutional litigation; and the parties opposing the class purport to act on grounds generally applicable to the class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

#### VI. FACTS

##### A. The MBTA Policy

16. On July 16, 2004, the MBTA Transit Police issued General Order No. 2004-19, effective July 19, 2004, creating and implementing a first-in-the-nation policy of conducting random searches of bags carried by mass transit passengers. (Attached is a copy the General

17. Under the General Order, the MBTA police will be conducting searches, referred to in the General Order as "Security Inspections," of handbags, briefcases, and other carry-on items of individuals attempting to board the MBTA system.
18. The searches will be conducted by a minimum of three uniformed police officers and one supervisor.
19. The searches will "not be based to any degree upon particularized suspicion of criminal activity." See General Order 2004-19, c. 3.1.
20. Rather, "[a]t the commencement of the Security Inspection process, the Supervisor will establish in writing the frequency of individuals subject to Security Inspections, e.g., that every eleventh passenger with a bag or parcel will be subjected to a Security Inspection." See *id.*, c. 4.3. The Supervisor may vary the frequency at regularly set intervals, but may do so no more than once per hour.
21. In order to determine which passengers to search, the MBTA will implement special methods for passengers to enter stations where searches are being conducted. For example, the MBTA will require that all passengers enter through a single entrance via a single file line. Supervisors will use hand counters to calculate which passengers to inspect.
22. The General Order calls for the searches to be conducted in one of three ways: by using Explosive Detection Dogs (EDD); by using Electronic Scanning Devices (ESD); or by Physical Inspections of passengers' baggage.
23. The General Order states that "[w]henever possible, the Security Inspections will be performed by Electronic Scanning Devices (ESD) or by Explosive Detection Dogs (EDD)."
24. However, as of June 22, 2004, the MBTA police had no ESD. MBTA Police Chief Joseph Carter indicated that, at most, the MBTA would be purchasing four such devices. Further, as of that date, the MBTA police had only four EDD.
25. The Physical Inspections are to be conducted by having passengers open up their carry-on items. The officers conducting the searches are authorized to move around, manipulate and remove any items inside a bag. This applies to all compartments as well. If there are any smaller closed containers inside of a bag, the officer is authorized to remove and open those containers as well.
26. Pursuant to General Order 2004-19, any person who refuses to stop and submit his or her baggage to a search will either be denied entry into the station or requested to leave MBTA property. If the individual persists on trying to board the MBTA system, the supervisor is to explain the search policy of the MBTA and reiterate that the individual will not be allowed to board unless her or she submits to a search. If the individual continues to refuse to leave after this explanation, the supervisor is to warn the individual that he or she will be arrested for Trespass

27. General Order 2004-19 provides that the MBTA is to post notices informing MBTA riders that all persons choosing to use the MBTA system will be subject to searches of their carry-on items. These notices are to be posted at least five days before the searches begin and are to remain posted for as long as the MBTA continues to conduct the searches.

28. Currently, there are no such signs notifying passengers of the MBTA's new search policy.

B. Plaintiff Tareef Kawaf

29. Tareef Kawaf was born in Damascus, Syria, and maintains a dual citizenship with Syria and the United States.

30. He has lived in the Boston area for nearly 18 years. He currently resides in Cambridge.

31. In order to get to and from his job as the vice president of engineering for a small software start-up company, Mr. Kawaf rides the MBTA subway every weekday. Mr. Kawaf boards the Red Line at Harvard Square and

gets off at Park Street, a major transfer point where the Red and Green lines converge. At that point, Mr. Kawaf either boards the Green Line to Arlington station or walks the rest of the way to his office. He takes the reverse route home.

32. Mr. Kawaf almost always carries a backpack with him containing his laptop computer and reading materials. On occasion, he also carries a compact disk player and several compact disks.

C. Plaintiff Dan Kesselbrenner

33. Daniel Kesselbrenner has lived in the Boston metropolitan area for the last 25 years. He currently resides in Somerville.

34. Mr. Kesselbrenner is the executive director of the National Immigration Project of the National Lawyers Guild. His office is located on Beacon Street in downtown Boston.

35. To get to and from his office each weekday, Mr. Kesselbrenner takes the MBTA subway. He boards the Red Line at either Porter Square, Davis Square or Kendall Square. On days that he gets on at Kendall Square, he takes the #85 bus to get there. He gets off at the I  
Park Street stop and walks to his office from there. He takes the reverse route home.

36. Mr. Kesselbrenner always carries a briefcase with him on his way to and from work. The contents of his briefcase include confidential papers and his laptop. I,

37. In addition to using the Red Line to get to and from work, Mr. Kesselbrenner uses all of the other lines with the exception of the Silver Line, for purposes of attending work-related meetings or other events and for purposes of personal travel.

#### D. Plaintiff Gabriel Camacho

38. Gabriel Camacho is a Latino who has lived in Brighton for the past 13 years.
39. Because Mr. Camacho does not own a car, he relies on the MBTA system for transportation.
40. To reach his office in North Cambridge each morning, he takes the "B" train on the Green Line to Harvard Street in Allston, rides the #66 bus to Harvard Square, then transfers onto the #77 bus to Ridge Avenue. He takes the reverse route to commute home at the end of the day.
41. Further, in the course of his work as a Regional Organizer with Project Voice of the AFSC, Mr. Camacho travels to various immigrant communities via the MBTA system frequently enough that he purchases a monthly "Zone 1" T Pass.
42. In the course of traveling on the MBTA system, Mr. Camacho frequently changes buses and trains at major transfer points including South Station, North Station, Back Bay, Government Center, Haymarket, Ruggles, Park Street, Porter Square, Harvard Square and JFK.
43. Mr. Camacho always carries some type of bag with him. When attending community meetings, Mr. Camacho usually carries a knapsack containing flyers, brochures, pamphlets, posters and booklets for distribution. If he is appearing in court or at a press conference, he carries a briefcase. Occasionally, Mr. Camacho must carry equipment such as a slide projector, or a laptop. Finally, when Mr. Camacho has to take a flight for work or otherwise, he takes a large suitcase with him on the blue line to Logan Airport.

#### VII. CLAIM

44. The above paragraphs are incorporated by reference.
45. The Fourth Amendment to the United States Constitution provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated."
46. The policy of the MBTA to seize passengers and conduct random searches of their baggage is unreasonable.
47. General Order 2004-19 calls for stopping passengers and searching their baggage without cause.
48. The degree to which the searches and seizures will interfere with individual liberty outweighs the gravity of the public concerns they will serve and the degree to which they will advance the public interest.

49. As a direct and proximate result of this policy, plaintiffs and other members of the plaintiff class will be deprived of their rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1983.

Vm. IRREPARABLE HARM

50. Plaintiffs have a constitutional right to be free of unreasonable searches and seizures.  
51. The denial of plaintiffs' constitutional rights constitutes per se irreparable harm.

VIX. PRAYER FOR RELIEF

WHEREFORE, plaintiffs request the following relief:

- (a) a preliminary and permanent injunction enjoining defendants, their agents, employees, assigns and all persons acting in concert or participating with them from seizing any person and/or searching that person and/or his or her belongings, in any way, without cause, prior to that person's riding on the MBTA transit system;
- (b) a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the MBTA Transit Police General Order 2004-19 is unconstitutional;
- (c) reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988; and
- (d) any other and further relief as this Court may deem necessary and proper.

Respectfully submitted,

For the Plaintiffs  
By their Attorneys,

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