

United States Senate

WASHINGTON, DC 20510

February 14, 2022

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland,

Your office received a letter from Delta Airlines on February 3, 2022. In that letter, Delta indicated their desire for the U.S. Department of Justice (DOJ) to create a comprehensive “no-fly” list¹. This list would presumably include any airline passenger who has been convicted of any on-board disruption. As a result, those passengers would subsequently be banned from using any commercial air service provider moving forward. We write today to express our strong opposition to the creation of such a list.

While airlines are currently free to deny service to any individual over past transgressions on their flights, the federal government’s role in denying access to the commercial aviation network has been limited to ensuring that suspected terrorists remain off of domestic flights. According to data from the Federal Aviation Administration², the majority of recent infractions on airplanes has been in relation to the mask mandate from the Transportation Security Administration (TSA). While we strongly condemn any violence towards airline workers, there is significant uncertainty around the efficacy of this mandate, as highlighted by the CEO of Southwest Airlines during a recent Senate Commerce, Science, and Transportation Committee hearing³. Creating a federal ‘no-fly’ list for unruly passengers who are skeptical of this mandate would seemingly equate them to terrorists who seek to actively take the lives of Americans and perpetrate attacks on the homeland. The TSA was created in the wake of 9/11 to protect Americans from future horrific attacks, not to regulate human behavior onboard flights.

Congress delegated authority to the TSA to “consider requiring passenger air carriers to share passenger lists” in order to identify “individuals who may pose a threat to aviation safety or national security.”⁴ The TSA’s existing ‘no-fly’ list for suspected terrorists is already

¹ Josephs, L. (2022, February 5). *Delta asks the Justice Department to put unruly travelers on a 'no-fly' list*. CNBC. Retrieved February 8, 2022, from <https://www.cnbc.com/2022/02/05/delta-asks-the-justice-department-to-put-unruly-travelers-on-a-no-fly-list.html>

² See https://www.faa.gov/data_research/passengers_cargo/unruly_passengers/

³ Scully, R. (2021, December 16). *Airline Executive says masks 'don't add much' on flights*. The Hill. Retrieved February 8, 2022, from <https://thehill.com/regulation/transportation/586072-airline-executive-says-masks-dont-add-much-on-flights>

⁴ See 49 U.S.C. §§ 114(h)

controversial due its lack of transparency and its due process concerns. However, the TSA has rightly chosen not to create a consolidated 'no-fly' list for passengers convicted of non-terrorist, on-board disruptions. The creation of this list by DOJ would result in a severe restriction on the ability of citizens to fully exercise their constitutional right to engage in interstate transportation. It also raises serious concerns about future unrelated uses and potential expansions of the list based on political pressures. If the airlines seek to have such a list created, they would be best served presenting that request before Congress rather than relying on a loose interpretation of a decades-old statute originally written to combat terrorism. Absent any updated expressed directive from Congress, we strongly urge DOJ to reject this request.

Sincerely,



Cynthia M. Lummis
United States Senator



Mike Lee
United States Senator



James Lankford
United States Senator



Marco Rubio
United States Senator



Kevin Cramer
United States Senator



Ted Cruz
United States Senator



John Hoeven
United States Senator



Rick Scott
United States Senator