



Lawmakers want Capitol attackers added to U.S. no-fly list

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Even as airlines continue to crack down on disruptive passengers in the wake of the Jan. 6 attack on the Capitol, lawmakers are stepping up calls to add those who broke into the Capitol to the federal no-fly list.

Both Senate Minority Leader Charles E. Schumer and House Homeland Security Chairman Bennie Thompson, D-Miss., have requested that those involved in the Jan. 6 attacks be added to the list, and on Thursday, a Republican, House Homeland Security ranking member John Katko of New York, signaled he was also amenable to the move.

“There is consensus that an individual who poses a real security threat to our homeland should not be permitted to fly,” Katko said.

But the possibility has spurred civil libertarians to warn that the federal list, created after the 9/11 terrorist attacks, remains an inherently flawed law enforcement tool.

“I totally get that once people breached the outer barricades they were violating federal law,” said Patrick G. Eddington, a research fellow in homeland security and civil liberties at the libertarian Cato Institute. “I’m not in any way minimizing what happened. It was an insurrection.”

But, he said, there’s a risk that someone who walked into the Capitol and caused no harm will be lumped in with the people who broke windows or attacked police.

Eddington said the no-fly list has always been a deeply flawed law enforcement tool. As evidence, he points to the late Sen. Ted Kennedy, D-Mass., and the late Rep. John Lewis, D-Ga., who both landed on the list for unclear circumstances.

“I think we have to proceed very deliberately here,” Eddington said. “I think the idea that you automatically say anyone on the Capitol Grounds [gets on the list] does not pass constitutional muster.”

Manar Waheed, senior legislative and advocacy counsel at the American Civil Liberties Union, also objected to expanding the list, calling it “a due process nightmare” that has unfairly targeted people of color.

“Doubling down on it now will simply further entrench an error-prone and unconstitutional system that will continue to be used unfairly against people of color,” he said. “President-elect Biden must fulfill his commitment to a review of the no-fly list, and lawmakers must work towards overhauling or ending this watchlist once and for all.”

Legacy of 9/11

The no-fly list, created after the 9/11 attacks, is a subset of the FBI’s Terrorist Screening Database, also known as the terrorist watchlist. There’s also a selectee list, which does not ban an individual from flying but flags individuals for additional airport security screening.

While civil libertarians have long expressed concern about the list, lawmakers say it’s been a critical law enforcement tool, with former Senate Intelligence Chairwoman Dianne Feinstein, D-Calif., saying in 2010 that the list “is one of our best lines of defense.”

On Tuesday, the FBI acknowledged it is considering adding those who invaded the U.S. Capitol to the no-fly list.

“As for the no-fly list, we look at all tools and techniques that we possibly can use within the FBI, and that’s something we are actively looking at,” Steven D’Antuono, FBI Washington field office assistant director in charge, said during a news conference on the attacks.

The list is separate from airlines’ internal no-fly lists, which ban flyers who violate airline policies.

Airlines are generally hesitant to lay out statistics on those lists, but on Thursday, Delta Air Lines confirmed it has added 880 people to its no-fly list for refusing to wear masks or unruly behavior related to the U.S. election results.

Speaking on CNBC on Thursday, Delta Air Lines CEO Ed Bastian said the airline will ban passengers traveling to Washington, D.C., from checking firearms as part of increased security measures ahead of the inauguration.

“We’re all on high alert based on the events over the last couple of weeks up in Washington,” Bastian said in an interview on CNBC early Thursday, adding that only law enforcement officials will be exempt from the ban.

United Airlines, meanwhile, has banned about 615 people over the past year for violating the face mask policy. That figure includes about 60 banned over the course of the last week, a spokesman said.

More enforcement

Even as the FBI adds weighing people to the no-fly list, Federal Aviation Administration chief Steve Dickson late Wednesday directed stricter legal enforcement against unruly passengers in the aftermath of the Jan. 6 attack.

In a news release, the FAA reported a “disturbing increase in incidents where airline passengers have disrupted flights with threatening or violent behavior.”

“These incidents have stemmed both from passengers’ refusals to wear masks and from recent violence at the U.S. Capitol,” the release read.

While the FAA has traditionally used a variety of methods to deal with disruptive behavior, such as warnings, Wednesday’s announcement signaled that the FAA planned to take future disruptions more seriously, automatically taking legal action against any passenger “who assaults, threatens, intimidates, or interferes with airline crew members.” Punishment includes imprisonment and fines up to \$35,000.

“While the FAA does not have regulatory authority over aviation security or no-fly lists, the agency works closely with federal law enforcement and national security partners on any reported security threats that may impact aviation safety,” the release said.

The policy will be in effect through March 30, 2021.