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Don't Check The Bill of Rights At The Airport

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If you're a seasoned traveler, chances are you know your "Passenger Bill of Rights," which protects you from the horrors of extended tarmac delays and hidden fees. Unfortunately, many passengers are not aware that the Constitution's Bill of Rights provides even more important protections, extending to the questioning many may receive at the airport gate.

A case in point: In late February, U.S. Customs and Border Protection (CBP) officers requested that passengers leaving a plane that had just arrived at New York's JFK airport from San Francisco present their "documents." These officers were reportedly searching for an immigrant with a deportation order. The immigrant was not on the flight.

With the Trump administration intent on ramping up interior immigration enforcement, citizens as well as undocumented migrants alike should expect to face new hassles at airports.

Some passengers on the San Francisco to JFK flight posted photos of the incident. Fortunately, the federal government has not passed a "Papers Please" law, which would allow officers to stop and demand identification from citizens absent criminal suspicion. You'd be forgiven for thinking that wasn't the case looking at these photos, which underline how important it is that passengers know that these kinds of stops are voluntary.

That doesn't mean that the stops *feel* voluntary. An armed officer at the door of the airplane you're trying to leave can be an intimidating sight, and there is an understandable instinct not to cause a fuss when the officer asks, "Can I see your documents?" Would you feel comfortable saying "No" in this situation?

As University of Baltimore law professor Garrett Epps explained, "I can find no legal authority for [Immigration and Customs Enforcement] or CBP to *require* passengers to show identification on an entirely domestic flight." It would help if citizens were made aware of this.

Accordingly, law enforcement officers at airports should be required by appropriate legislation to inform domestic travelers who have cleared security that, unless they're being detained based on suspicion of wrongdoing, they are free to go on their way.

A template of such a notification could look something like the following: "I am officer [name] with [law enforcement agency]. I'd would like to search your belongings /check your identification, but you are not being detained and are free to leave. You are also free to refuse searches and requests to identify yourself."

Data suggest that most Americans would be in favor something like this notification, with a Cato Institute/YouGov survey finding that 73 percent of Americans would support a law requiring police to tell citizens if they may refuse a stop or a search.

But, absent the implementation of such a law, we could soon be living in a world where American travelers think that it is normal to hand over their documents to CBP officers at the doors of airplanes. After all, many of these travelers will mistakenly believe that such stops aren't voluntary.

Such a world would provide fertile ground to those who want to implement a national ID scheme, which would threaten our privacy and run contrary to the liberal values embodied in our Constitution. Once enough law-abiding citizens become used to being asked for documents, a national ID system will begin to look more plausible. The privacy risks associated with such a trend are too high a price to pay for increased immigration law enforcement.

It's perhaps a little too much to expect the average American or tourist to know what their options are when asked for their papers. But it's not too much to ask that CBP officers inform travelers that they are free to go on their way.

For too long, federal law enforcement has managed to expand the ever-growing security theater at airports, all while relying on "voluntary" behavior. Passengers are not required to go through the body scanner machines at airport security, but you may not have noticed the signs telling travelers that they are free to opt out of the scan. In the post 9/11 world, million of passengers now consider it normal to step into a body scanner in order to get onto a domestic flight. This isn't because of a law requiring that passengers go through the scanners. Rather, it's because enough people go through them without question.

We don't need a "Papers Please" law for America to turn into the kind of country where police can request and receive documents from citizens at will; all that's required is for enough citizens to comply with such requests.

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