

No-Fly List to get further scrutiny after panel's ruling

By John Roemer

Daily Journal Staff Writer

Lifting the veil a bit on the government's opaque terrorist watchlist system, a 9th U.S. Circuit Court of Appeals panel ruled Wednesday that a noncitizen Stanford University student has the right to challenge her placement on the list.

The panel, voting 2-1, reversed U.S. District Judge William Alsup of San Francisco, who ruled that Rahinah Ibrahim's inclusion on the list might be a "monumental mistake" but because she had left the U.S. and flown to her native home of Malaysia, she had "left her constitutional rights at the water's edge."

Alsup must now examine Ibrahim's claims for relief, including her demand the government remove her from the list, the panel majority concluded. *Ibrahim v. U.S. Department of Homeland Security*, 2012 DJDAR 1798.

The panel ordered federal officials to produce documents identifying Ibrahim as a candidate for special airport screening, as well as documents considered when placing her on the No-Fly List and on a separate database of terror suspects.

The opinion gave a chilling peek at the errors and misidentifications that have plagued the secret federal Terrorist Screening Database. After internal criticism by the Department of Justice in 2006 for a weak quality assurance process in identifying individuals, officials pruned the list of 71,000 names by more than half, though it remains controversial.

"This is a very significant decision," said

Sanford Jay Rosen, a veteran civil rights litigator and senior partner at Rosen, Bien & Galvan LLP who is on the case with the Asian Law Caucus as friends of the court. "People like Ms. Ibrahim have been subjected to extraordinary restraints, despite a lot of false positives and later corrections."

Rosen said it was the first terror watchlist case to have reached the federal appellate level.

Ibrahim, a citizen of Malaysia and a mother of four, is a design and architecture professor and dean at a university in her homeland. She studied construction engineering at Stanford from 2001 to 2005 on a student visa.

When she attempted to fly from San Francisco to Kuala Lumpur, Malaysia, in 2005 to lecture on her research at a Stanford-sponsored conference, a United Airlines agent spotted her name on the No-Fly List.

A federal contractor working for the Transportation Security Agency told police to prevent Ibrahim from flying, call the FBI and detain her. San Francisco police cuffed her and locked her in a holding cell without explanation, according to the opinion by Circuit Judge William A. Fletcher joined by colleague Dorothy W. Nelson.

Released at the FBI's request a few hours later, Ibrahim was allowed to fly to Malaysia the next day but has never been permitted to return to the U.S. to complete her Ph.D. studies, despite appeals to the U.S. embassy by her and by Stanford officials.

Asserting she had nothing to do with terrorism, Ibrahim sued federal and local officials in 2006 claiming wrongful detention and constitutional violations involving her inclusion on the watchlist. Alsup dismissed

her suit, finding he was powerless to hear the case. The 9th Circuit reinstated the suit in 2008, telling the trial judge he had the authority to scrutinize how the Department of Homeland Security's Transportation Security Administration handles terror listings.

Government lawyers next argued that because Ibrahim had voluntarily left the country, U.S. justice was beyond her reach. Alsup agreed.

But under federal precedent, Fletcher wrote, Ibrahim has "significant voluntary connection" with the U.S. "such that she has the right to assert claims under the First and Fifth Amendments."

Dissenting, U.S. District Judge Kevin Thomas Duffy of New York, sitting by designation, contended that because Ibrahim has been unable to obtain a visa to again visit the U.S., allegedly on grounds other than her appearance on the No-Fly List, her complaint cannot be redressed. Also, he wrote, Ibrahim has no substantial voluntary connection to the U.S.

A Homeland Security spokesman, Matthew Chandler, referred questions to the Department of Justice, where spokesman Charles Miller said that officials were reviewing the decision.

Ibrahim's lawyers at McManis Faulkner said the case could now move forward even though their client remains overseas. "She'll get her day in court, possibly in absentia," said firm partner Marwa Elzankaly. "With today's technology, she could testify from afar. We're hoping to get some purchase on the No-Fly List, though it hasn't been easy. We live in a global society. We hear this kind of problem has become an issue with foreign students at other schools."