

“HOMELAND SECURITY'S” ASSAULT ON TRAVEL



How America's sex laws endanger your, your children's and everyone's freedom of movement as travelers are routinely detained, interrogated, searched and harassed by the Department of Homeland Security in a systematic effort to erode the foreign travel rights of American “registered sex offenders” (and regardless of the outcome of the International Megan's Law bill now before Congress).

By David Kennerly

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Companion piece to: "DEAD END: The International Megan's Law's Assault on *Everyone's* Freedom of Travel"

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"As nightfall does not come at once, neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air—however slight—lest we become unwitting victims of the darkness." —Justice William O. Douglas

The dramatic expansion of the many crimes now considered to be "sex offenses" and the encroachment of those laws into the lives of those ensnared in its web, should find us all disturbed by its potential to destroy livelihoods, relationships, families, freedom of movement and even lives, themselves.

America and the world must stir itself from the enthusiastic credulity with which it has greeted the steady drumbeat of laws which expand the definition of "sex offenses" and which impose ever more draconian punishments which suffocates the life out of the sex offender.

That children, themselves, are now routinely among those identified as "sex offenders", and often for the experimentation and play which would have, in earlier times, escaped the perverse attentions of law enforcement (if not their parent's ire) should disabuse us of our comfortable assumptions about who is, today, a sex offender.

When we consider that such kids, or those whose "sexual offenses" were "committed" as kids, have rights which are vastly degraded beyond those of anyone else, and an endless stigma imposed upon them which no one else is forced to endure, then we should find our comfortable prejudices, born throughout these years of ever-expanding legislation, pointedly challenged. Our *unassailable beliefs* should, rightly, be *assailed* and we should lend far more consideration to those voices which arise, not just from good faith, but from reason and experience.

For far too long we have allowed those whose voices have overpowered all others to enjoy a monopoly on speech with results exacted in the destruction of lives and liberty; often of those of children, themselves.

We should begin to listen with greater respect to those with a high regard for justice and reason and who speak and act from rational insights gained through genuine experience and knowledge. We must no longer allow those who shout the loudest to drown-out our own sensibilities or commonsense.

Regardless of the outcome of the International Megan's Law bill now in the U.S. Senate, sex offenders will, undoubtedly, continue to be treated worse than virtually any other traveler (except for, possibly, journalists) as they have been for more than a dozen years. [See: DEAD END: The International Megan's Law's Assault on *Everyone's* Freedom of Travel]

U.S. citizenship offers no assurance to anyone that they will pass unmolested through this area which is the U.S. Customs and Border Patrol (CBP) / Immigration and Customs Enforcement (ICE) pre-clearance hall (just after baggage-claim) found in every international airport in America but you can bet that, for the sex offender, their treatment is often very much worse. ¹

An American sex offender traveling on business can return to the U.S. on a direct flight (at least half of whose occupants were nationals of that flight's country of origin) from a country whose inhabitants are overwhelmingly, if not almost *exclusively*, Muslim (as has happened) and with established networks of Islamic terrorists, either Al Qaeda or those closely allied with Al Qaeda, during a *peak terror watch* level (the color code having been declared "Red"), and be reasonably confident that he (and it's almost always a "he") will be the *last* person to leave the U.S. Customs and Border Patrol secondary inspection area, out of all of the travelers from that flight.

One need not advocate the random harassment of Muslims or of non-white travelers, by any means, to be puzzled by this apparent incongruity, especially when one considers that the Department of Homeland Security and the TSA were created *particularly* to guard against terrorist threats and with an unapologetic policy to *actively profile* those thought to be Muslim.

Apparently, one can reasonably infer that there is one type of “terrorist” which Homeland Security finds more threatening than Al Qaeda; that is the aging, registered sex offender whose sole conviction, decades earlier, for a same-sex offense with a minor (with no allegations of force or coercion) whose position within his industry (representing American products) necessitates international travel and which brings him into frequent contact with its Customs and Border Patrol agency having passed through Customs, literally, many *dozens* of times.

One can draw no other conclusion when that traveler's experience in disembarking from chock-full 747's consistently saw him as the last person from that flight to exit the Customs inspection area of the international terminal and hail a cab. It won't matter that he had had no other brush with the law since his one conviction, more than a quarter-century before, nor that he can readily demonstrate legitimate business purposes in traveling.

Prior to 9/11, he had never been stopped by U.S. Customs but, forever since, has been *invariably* stopped, searched and questioned, and with an escalation in intrusiveness that has only increased over time, in contrast to what one might logically expect, given the expanding period of time over which he has failed to break any laws.

It is now quite apparent that 9/11 served as the excuse needed to limit the free movement of people, not only through the TSA whose “security theater” posed visibly dramatic and well-publicized hassles in boarding flights (but which imposed far graver consequences for those appearing on their now notorious “no fly” lists and from which countless innocents have struggled to be removed) but also through the far-less visible “return portion” of the international traveler's ticket.

It is with considerably greater dread which many travelers contemplate their return to the U.S., knowing they will face a far scarier gauntlet erected by the U.S. Customs and Border Patrol. For many of them, the necessity of travel for holiday, to visit family or friends or to conduct business, must now be weighed against a dread which will greatly diminish what would otherwise be an entirely joyful reunion or a productive series of meetings.

As a result, many have opted to greatly curtail their trips abroad. Some have simply stopped traveling, altogether.

The aggravations posed by the TSA, which affects more domestic travelers than international, have received far greater attention than the more frightening threats posed by DHS's CBP or its investigative arm, ICE, when one is caught in its “nearly constitution-free” zone. One might liken this zone to a “sally port” of the type found at the entrance to prisons where one is allowed to go neither forward nor backward without having first satisfied all of one's captor's demands. When there, and despite that it is entirely contained within the United States, rights are precious and few. Without permission, you *are not* free to go about your business. ²

Within this zone, thousands of American citizens have had their computers, cellphones, iPads, digital cameras, memory sticks and hard drives routinely seized and all of the information contained within them forensically scrutinized copied and, presumably, shared with other government agencies. Many of those Americans are registered sex offenders.

Recent court rulings purport to limit (in theory) the government's ability to conduct *forensic level* scrutiny of hard drives and to retain data without reasonable suspicion but do nothing to prevent CBP/ICE from examining files and *non-forensically* searching hard drives. Given what we now know of the NSA and of its devious practice of “parallel construction” (in coordination with other agencies such as the DEA and the FBI) it is hard to imagine this ruling frustrating attempts at either.

Sex offenders, however, are specifically *excluded* from even this mild limitation. Federal Judge Edward Korman makes clear that sex offenders, by their very status and *existence*, continuously (and forever) provide sufficient *reasonable suspicion* that forfeits their rights in this regard.

All of the myriad details of ones life, if a *sex offender*, are now claimed by the United States government - *and actionable in all ways it might exploit* - when they step into the *magical DHS zone*, a zone in which the Fourth Amendment, at a minimum, nearly ceases to exist. ³

While being questioned in that zone, you are not informed of your Miranda Rights because, frankly, the agents don't have to. Yet anything you say to them can be used in a court of law to convict you. Innocent, even completely *inconsequential*, misstatements can result in serious criminal penalties for providing "false reports" to law enforcement. ⁴

You can be held indefinitely and asked all manner of deeply personal, even insulting questions which are completely irrelevant to your recent travels. They can threaten you with arrest, tell you they're sending a search team to your house, and lie that they have evidence against you of a crime and try to convince you that your encounter with them represents the perfect opportunity for you to confess unless, of course, you want to spend the rest of your life in prison. ⁵

You can be strip-searched, "body-cavity" searched, x-rayed and made to wait, sometime for hours, if U.S. Customs takes a notion to do so.

If you are unfamiliar with the peculiar laws to which you are subject in this netherworld, you will not know which questions you are legally obliged to answer nor are you likely to be informed of those obligations by the Customs agents who pose them. ⁶

The same, often nightmarish, "secondary inspection" treatment which Poitras has come to expect from US-CBP, has been the rule for anyone on the sex offender registry upon their return to the United States, now for more than a dozen years. But this same extraordinary treatment, once reserved primarily for sex offenders, suspected drug couriers or those with Arabic names has become, more recently, routine for many others, journalists, civil liberties attorneys, whistleblowers, libertarians, advocates of drug decriminalization, antiwar activists and human rights activists.⁷

Foreign sex offenders attempting to visit the U.S. may be shocked to learn that, when they can be identified by CBP as such, they *will* be barred entry to the United States and *will* be getting on a return flight much sooner than they had hoped, having never left the destination airport.

Our lawmakers claim, with a straight face, that this is to guard against the "sex trafficking" of American kids, a claim difficult to reconcile with their assertion that *American* sex offenders' purpose in traveling abroad is to "traffic" kids in the "developing nations", who are said to be vastly more vulnerable to child prostitution than those at home.

While hard data is difficult to come by (being that it would be coming from government) it is widely known that, for a number of years since an agreement was established between those English-speaking countries known as "The Five Eyes", i.e. the United States, the United Kingdom, Canada, Australia and New Zealand, sex offenders from those countries attempting to visit other of those countries were, in most or all cases, refused entry.

It may have been this "Five Eyes" model of cooperation and the network which makes its implementation possible upon which International Megan's Law, and the many equivalent such laws which are beginning to propagate worldwide, is based. Interpol is now seen to be the *visible* organizing force behind this global push to implement Megan's Law amongst all of the countries who are a party to it, some 190 different nations.

If "International Megan's Law" is enacted, there will be far fewer registered sex offenders subjected to the extreme levels of scrutiny that has been their "Welcome Back to the United States!" for a number of years now, as articulated on signs typically found in the passport control lanes for returning American citizens. Instead, they will simply *never be allowed to leave home* in the first place.⁸

Welcome home, indeed!

"There is no crueller tyranny than that which is perpetuated under the shield of law and in the name of justice." Charles de Montesquieu

Endnotes

- 1 “The few rights that are afforded to Americans and visitors alike at U.S. ports of entry are by far outweighed by the authority of the border officials.” “Welcome to the United States: Discriminated, detained, searched, interrogated” ZDNET, August 31, 2013 <http://www.zdnet.com/discriminated-detained-searched-interrogated-at-the-united-states-border-7000020045>
- 2 DHS Travel Screening Measures: <https://www.eff.org/issues/travel-screening>
- 3 Eastern District of New York Judge Edward R. Korman dismisses plaintiff action brought by NACDL and ACLU against DHS, December 31, 2013 <https://www.nyed.uscourts.gov/sites/default/files/opinions/10cv4059mo12312013.pdf>
- 4 Immigrants Deserve Basic Miranda-Like Warnings When Arrested - <http://immigrationimpact.com/2013/02/28/immigrants-deserve-basic-miranda-like-warnings-when-arrested>
- 5 “ACLU: Know Your Rights When Traveling” <https://www.aclu.org/technology-and-liberty/know-your-rights-when-traveling>
- 6 “Lighting the Darkest Corners of Government” Electronic Frontier Fndn., June 10, 2014 <https://www.eff.org/deeplinks/2014/06/lighting-darkest-corners-government-glenn-greenwalds-no-place-hide-explores-role>
- 7 “Laura Poitras, Journalist and Documentary Filmmaker”, Wikipedia http://en.wikipedia.org/wiki/Laura_Poitras
- 8 “Can a registered sex offender renounce US citizenship? What are the pros/cons?” <http://www.lawqa.com/qa/can-registered-sex-offender-renounce-us-citizenship-what-are-pros-cons2>