

**BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.**

MARC FERNANDES, SHAHANA
ISLAM, SABIHA ISLAM, BAKIUL
ISLAM, and ANSHUL AGRAWAL

v.

AEROFLOT AIRLINES

Docket _____

**COMPLAINT OF MARC FERNANDES, SHAHANA ISLAM,
SABIHA ISLAM, BAKIUL ISLAM, AND ANSHUL AGRAWAL**

Communications with respect to this document should be addressed to:

Waleed Nassar
Lewis Baach Kaufmann Middlemiss PLLC
1899 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
waleed.nassar@lbkmlaw.com
Tel.: (202) 833-8900
Fax: (202) 466-5738

Johnathan J. Smith
Juvaria S. Khan
Muslim Advocates
P.O. Box 66408
Washington, D.C. 20035
johnathan@muslimadvocates.org
juvaria@muslimadvocates.org

Dated: March 22, 2018

**COMPLAINT OF MARC FERNANDES, SHAHANA ISLAM,
SABIHA ISLAM, BAKIUL ISLAM, AND ANSHUL AGRAWAL**

Muslim Advocates and Lewis Baach Kaufmann Middlemiss PLLC respectfully submit this complaint to the U.S. Department of Transportation (“DOT”) on behalf of five United States citizens who were subjected to grossly discriminatory treatment by Aeroflot Airlines (“Aeroflot”) in January 2018. What should have been a routine return flight home turned into a harrowing ordeal after Aeroflot staff steadfastly refused to allow American customers who were or who were perceived to be of South Asian descent to return to the United States, “deporting” them instead to India — all while providing customers on the same flight who were or who were perceived to be White Americans with accommodations and connecting flights to America. Aeroflot’s treatment of American citizens was not only unjust and unfair, it also violates Aeroflot’s internal protocols as well as federal aviation and nondiscrimination laws. Accordingly, we urge DOT to conduct a full and thorough investigation of this matter.

SUMMARY OF FACTS

On January 7, 2018, five United States citizens of South Asian descent — Marc Fernandes, Shahana Islam, Sabiha Islam, Bakiul Islam, and Anshul Agrawal (collectively, the “Passengers”) — were returning home on Aeroflot after a trip to India.¹ Upon landing in Moscow at 6:00 am, where they were expecting to catch their connecting flight to New York’s John F. Kennedy International Airport (“JFK”),² the Passengers learned that their flight had been canceled due to inclement weather. Aeroflot

¹ The Passengers flew on Aeroflot Flight SU233 from Indira Gandhi Airport in New Delhi to the Sheremetyevo Airport in Moscow. Aeroflot issued them the following ticket numbers: Marc Fernandes (555 8657121039); Shahana Islam (555 8657121040); Bakiul Islam (555 8657121041), Sabiha Islam (555 8657121042); and Anshul Agrawal (555 8691804833).

² The connecting flight was Aeroflot SU102.

staff requested the Passengers to return at 10:00 am for an update. Upon returning at 10:00 am, Aeroflot again asked the Passengers to return later — this time at 1:00 pm.

As instructed, the Passengers returned a third time at 1:00 pm. It was at this juncture that Aeroflot employees began engaging in grossly discriminatory conduct towards passengers whom they perceived to be of South Asian descent. Specifically, when the Passengers — along with the dozens of other travelers who were perceived by Aeroflot of being of South Asian descent (“South Asian Travelers”) — arrived for the 1:00 pm update, they were informed that no seats were available on a later flight to New York and that Aeroflot’s partner airlines, which operate alternative routes to the United States through Europe, were already fully booked and also unavailable. Aeroflot staff further informed the South Asian Travelers that they would not be provided with any accommodations while they remained stranded in Moscow’s airport.³

An Aeroflot representative, identified by his name tag as “Mikhail,” then informed the South Asian Travelers that Aeroflot would not be issuing them transit visas, and as a result, they could not stay in Moscow for more than 24-hours due to Russian regulations. As such, Mikhail informed them, their only choice would be to “go back to India” on a later flight or be forcibly “deported” to India by Russian officials.

The South Asian Travelers — including the Passengers — repeatedly informed Mikhail and other Aeroflot staff that they could not be “deported” to India because they were United States citizens. As proof, they showed Aeroflot staff their United States passports. Mikhail and the other employees refused to listen; as Mikhail grew increasingly frustrated and angry, he began threatening the travelers with civil and criminal sanctions, including forfeiture of their Aeroflot tickets if they refused to accept

³ As explained in greater detail below, such actions violated Aeroflot’s own internal policies.

that they were “Indians” who had to return “back to India.” He then left to speak with other Aeroflot staff.

During Mikhail’s absence, a different Aeroflot employee with the name tag “Kitora” acknowledged to the Passengers that Aeroflot had been diverting other passengers who had been stranded in Moscow through return flights via Europe. Kitora expressed surprise that such an option had not been provided to them, and she reassured them that United States citizens would not only avoid “deportation” to India but that they would have priority for Aeroflot’s flight that evening to JFK. As Kitora was explaining that many United States citizen travelers had already been issued their boarding passes for that flight, Mikhail returned with boarding passes to New Delhi for the Passengers. Kitora left to speak with other customers, and when the Passengers informed Mikhail what Kitora had just explained about the flight to JFK, he became combative and rude.

The Passengers then waited an hour to speak with Kitora again, who was busy assisting other South Asian Travelers who had overheard what she said to the Passengers and were also seeking assistance. Although Kitora initially took the Passengers’ passport information to assist them, she left to confer with her supervisors and upon returning, exhibited a markedly changed demeanor: suddenly, she refused to engage with *any* of the South Asian Travelers, instead repeatedly stating that there was nothing she could do for them.

Mikhail, meanwhile, had left again to speak with other Aeroflot officials. Upon returning, he abruptly informed the Passengers that they had been placed on the list for the 7:50 pm flight to New Delhi. Video footage taken at this time shows Mikhail holding up one of the Passengers’ United States passport and threatening them with deportation

as he angrily informs passengers of South Asian descent that “I am only talking with Indian passengers!”⁴ After the Passengers respond that they are United States citizens and cannot be “deported” but only returned to their home country — the United States — the video shows Mikhail slamming the passport down onto the counter and walking away.

Increasingly concerned about the situation, the Passengers frantically called the United States Embassy in Moscow. The staff at the Embassy confirmed that it would be illegal for Aeroflot to deport United States citizens to third countries against their will. Although the officer on duty at the Embassy repeatedly asked to speak with Aeroflot to correct the situation, Aeroflot employees refused to speak with him, instead reiterating their threat that the Passengers would be deported and that if they did not return to India, Aeroflot would “make matters worse” for them — including through criminal deportation and heavy fines. Mikhail, who had returned, informed the Passengers that he would ensure that Aeroflot would not provide them with any other tickets if “they made any more trouble” and that the Passengers would be forced to pay for their own return tickets to the United States. After the Passengers relayed Mikhail’s threat to the Embassy, the official on the phone advised them that deportation — particularly in Russia — could have serious legal ramifications, and that the Passengers should do what they could to avoid that process.

Aeroflot’s treatment of travelers on the same originating flight who they perceived to be white Americans (“White Travelers”) was markedly different than the treatment received by Passengers and the other South Asian Travelers. At the same time

⁴ Dory Jackson, *Airline Allegedly Sends Couple Back to India Despite Being American*, International Business Times (Jan. 10, 2018), <http://www.ibtimes.com/airline-allegedly-sends-couple-back-india-despite-being-american-2639789>.

the South Asian Travelers were being rudely treated by Mikhail and the other Aeroflot employees, two of the White Travelers, who had also been in Moscow for many hours and were eager to return home, were provided with lounge access so they could rest until seats became available on a flight to the United States. At no point did the Passengers hear any Aeroflot representative warn these White Travelers about the 24-hour limitation for stays in Moscow. Two other White Travelers spoke to Mr. Agrawal and explained that they had flown into Moscow from Ho Chi Minh City, Vietnam on Aeroflot and were waiting to connect to JFK. They stated that they had stayed in Moscow over 24-hours without any threats or concerns from Aeroflot and had not faced any attempts at “deportation” back to Ho Chi Minh City — instead, Aeroflot had provided them with lounge access as well.

In contrast, Aeroflot provided none of the Passengers — and to their knowledge, none of the South Asian Travelers — with any lounge access or other similar accommodations. Instead, for hours the Passengers observed numerous Aeroflot staff berating these customers, including demanding that they keep quiet and move their young children, who were understandably frustrated and exhausted, away from Aeroflot’s desks. Many of the South Asian Travelers were visibly upset and in tears. Some of the White Travelers who watched these events unfold confronted Aeroflot staff, demanding to know “why the [South Asian Travelers] are being treated differently” and complaining that this grossly inconsistent treatment of passengers was discriminatory.

Fearing for their safety and feeling that they had no other choice after Aeroflot’s repeated threats, the Passengers—along with approximately 20-25 of the South Asian Passengers, many of them young children and babies — boarded an Aeroflot flight back

to New Delhi. Unfortunately, Aeroflot's unjust and discriminatory treatment of the Passengers and the other South Asian Travelers continued even after they left Moscow.

Despite Aeroflot's assurances in Moscow that a full staff would be on the ground to assist them with accommodations and return flights when they landed, these South Asian Travelers arrived in New Delhi to find not a single Aeroflot representative present. After finally finding one Aeroflot representative in baggage claim, the Passengers were given the contact information for Aeroflot's office in Connaught Place, New Delhi, located nearly an hour and a half away. This representative, Neeraj Bhatia, informed the Passengers that this local office would not open until 10:00 am, which was several hours after they had landed, and that they should receive a call from an Aeroflot representative at that time with more details. Mr. Bhatia further informed the Passengers that Aeroflot had informed him it would fully reimburse return tickets booked on any other airline.

Mr. Fernandes and the Islams, despite having not slept for nearly 36 hours, drove directly to Aeroflot's office to book a return flight. Upon arriving, a sole Aeroflot employee was found attempting to assist numerous individuals while the phones rang continuously without answer. Mr. Fernandes and the Islams were finally able to speak with this representative, who informed them that Aeroflot would only refund half the cost of the tickets — and that flights booked through non-Aeroflot airlines would not be reimbursed at all. The representative then explained that no Aeroflot flights were available to Washington, D.C. or New York until January 15, so their only option was to fly from Moscow to Miami on January 11. Wishing to avoid traveling through Moscow again, Mr. Fernandes and the Islams purchased four one-way tickets on Qatar Airways to Washington, D.C. at a cost of several thousand dollars. As a result of these delays, Mr.

Fernandes missed four days of work; Ms. Shahana Islam missed four days of work and four days of her graduate school coursework; and Mr. Bakiul Islam — an 18-year old senior in high school — missed four days of classes.

Mr. Agrawal, meanwhile, based on the lack of accommodations and transportation assistance provided by Aeroflot, decided to leave New Delhi, and took a flight to his family in Jaipur, India. He called Aeroflot's New Delhi office all day from Jaipur but received no response. Mr. Agrawal then sent an acquaintance in New Delhi to visit Aeroflot's office the next day on his behalf; the Aeroflot representative informed Mr. Agrawal's acquaintance that although Aeroflot would issue Mr. Agrawal a new ticket for January 13, it would not provide any reimbursement if Mr. Agrawal flew with a different airline. Reluctantly, Mr. Agrawal accepted the belated return on Aeroflot, despite his unease at returning through Moscow. This delay of several days led him to miss multiple days of work, causing significant disruptions.

**AEROFLOT'S TREATMENT OF THE PASSENGERS AND OTHER SOUTH
ASIAN TRAVELERS WAS GROSSLY DISCRIMINATORY AND VIOLATES
FEDERAL LAW**

Aeroflot's actions defy justification. Aeroflot employees repeatedly and systematically targeted and discriminated against the South Asian Travelers, in clear violation of federal law.

In particular, federal law prohibits air carriers, including foreign air carriers such as Aeroflot, from engaging in discriminatory practices. *See, e.g.*, 49 U.S.C. § 40127(a) (“An air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.”); 49 U.S.C. § 41702; 49 U.S.C. § 41310(a) (“An air carrier or foreign air carrier may not

subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.”); 49 U.S.C. § 41712(a) (prohibiting “unfair or deceptive practices” by air carriers or foreign air carriers). Aeroflot’s treatment of the Passengers and the other South Asian Travelers undeniably contravenes these protections. Due to the Passengers perceived race, color, national origin, and/or religion,⁵ Aeroflot’s employees engaged in a pattern of discriminatory conduct and treatment — including refusing to provide them with the accommodations and return flights they provided to White Travelers, and by threatening the South Asian Travelers with substantial civil and criminal penalties.

Aeroflot’s discriminatory intent is further evidenced by the fact that Aeroflot employees’ treatment of the Passengers is inconsistent with the airline’s internal policies and procedures. For example, Aeroflot’s own internal policies require that upon inclement weather delays such as the one at issue in this situation, it will provide passengers without transit visas with hot meals, hotel accommodations, and transportation to and from lodging.⁶ Aeroflot provided no such measures here to the Passengers or to other South Asian Travelers — yet it did provide these benefits to its White Travelers. That Aeroflot employees deviated from their company’s protocols when dealing with the South Asian Travelers only further highlights the central role that discrimination played here.

Given that Aeroflot has a significant presence within the United States aviation industry, it is critical that DOT ensure that Aeroflot is fully compiling with all federal

⁵ Four of the Passengers are Muslim; the fifth is Hindu.

⁶ Aeroflot Rules of Passenger and Baggage Carriage, Section 6.5: “For passengers without a visa, provisions shall be made for special accommodations with adherence to the procedure for serving transfer passengers without visas at the airport and for interaction with government agencies and other services when accommodating this category of passengers at hotels.”

antidiscrimination mandates. Aeroflot has a place of business in California and markets itself to American customers. It has regular flights to multiple major destinations in the United States, including but not limited to, Washington, D.C.; New York New York; Los Angeles, California; and Miami, Florida. DOT has a strong interest in ensuring that an airline serving American customers is fully complying with its obligations under federal law to not discriminate against passengers on the basis of their perceived race, color, national origin, and/or religion.

CONCLUSION

The treatment endured by the Passengers and the other South Asian Travelers was grossly discriminatory and violates the fundamental protections that federal law requires should be afforded to all travelers. As a result of Aeroflot's unjust and humiliating actions, the Passengers have suffered and continue to suffer significant emotional distress. They fear future travel through Russia and have incurred substantial monetary expenses due to the delays caused by their mistreatment. In addition, the Passengers' good faith efforts to engage in dialogue directly with Aeroflot to address the airline's mistreatment have been unsuccessful.

The Passengers therefore request that the DOT conduct a full and thorough investigation into Aeroflot's actions to ensure that the airline be held accountable for its mistreatment of United States citizens — citizens whom the airline discriminated against for no apparent reason other than their perceived race, color, national origin, and/or religion. Such mistreatment has no place in any setting, and the DOT should ensure that no other travelers endure this type of discrimination and mistreatment by Aeroflot.

Respectfully Submitted,

By: /s/ Waleed Nassar

Waleed Nassar
Lewis Baach Kaufmann Middlemiss PLLC
1899 Pennsylvania Avenue, N.W., Suite 600
Washington, D.C. 20006
waleed.nassar@lbkmlaw.com

By: /s/ Johnathan J. Smith

Johnathan J. Smith
Juvaria S. Khan
Muslim Advocates
P.O. Box 66408
Washington, D.C. 20035
johnathan@muslimadvocates.org
juvaria@muslimadvocates.org

VERIFICATION

Pursuant to Title 18 United States Code Section 1001, I, Waleed Nassar, in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. § 1001 shall be fined or imprisoned not more than five years, or both.

Dated: March 22, 2018

/s/ Waleed Nassar
Waleed Nassar

CERTIFICATE OF SERVICE

I hereby certify that I have, this 22nd day of March, 2018 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

Gary B. Garofalo, Designated Agent of Aeroflot
ggarofalo@ggh-airlaw.com

Jonathan Feldman, Counsel for Aeroflot
jfeldman@reedsmith.com

Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings
blane.workie@dot.gov

Kimberly Graber, Branch Chief, Consumer Protection and Competition Law, Aviation Enforcement and Proceedings
kimberly.graber@dot.gov

Robert Gorman, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings
robert.gorman@dot.gov

/s/ Waleed Nassar
Waleed Nassar