UIC John Marshall Journal of Information Technology & Privacy Law

Volume 30 | Issue 4 Article 1

Summer 2014

The Right To Travel And Privacy: Intersecting Fundamental Freedoms, 30 J. Marshall J. Info. Tech. & Privacy L. 639 (2014)

Richard Sobel

ARTICLES

THE RIGHT TO TRAVEL AND PRIVACY: INTERSECTING FUNDAMENTAL FREEDOMS*

RICHARD SOBEL+

ABSTRACT

As a fundamental right inherent in American citizenship and the nature of the federal union, the right to travel in the United States is basic to American liberty. The right precedes the creation of the United States and appears in the Articles of Confederation. The U.S. Constitution and Supreme Court recognize and protect the right to interstate travel. The travel right entails privacy and free domestic movement without governmental abridgement.

In the era of surveillance, the imposition of official photo identification for travel, watchlist prescreening programs, and invasive airport scans and searches unreasonably burden the right to travel. They undermine citizen rights to travel and to privacy. These regulations

---

* An earlier version of this research was presented by Richard Sobel & Ramon Torres as "The Right to Travel: Intersection with the Right to Privacy and a Personal Liberty," at the Northwestern University Transportation Center Seminar Series on January 6, 2011. It formed a basis for Sobel & Torres, *The Right to Travel a Fundamental Right of Citizenship*, in the Journal of Transportation Law, Logistics & Policy, Spring 2013. The current Article updates portions of the earlier presentation and publication. The author thanks Dawid Danek, Kevin Doran, Brian Kebbekus, Tim Lamoureux, Catherine Nance, Allison Trzop and Michael Zhang, for research assistance and comments on the Article. He also appreciates the insights and suggestions of Barry Horwitz, Gerald Jenkins, Diana Marek, Matthew Beamer, and Ramon Torres, and the assistance of the Buffett Center, Transportation Center, NICO, Hutchins Institute, Houston Institute, Journal of Transportation Law, Logistics & Policy, and The John Marshall Journal of Information Technology & Privacy Law.

+ Buffett Center for International and Comparative Studies, Northwestern University, at richard-sobel@northwestern.edu. In addition to being a Visiting Scholar at the Buffett Center, he is also a faculty affiliate of the Transportation Center at Northwestern, an associate of the Hutchins Institute, and a consultant to the Houston Institute at Harvard.

impermissibly require citizens to relinquish one fundamental right of privacy in order to exercise another fundamental right of travel. The government must preserve these rights in addressing policy goals.

The original conception of the right to travel embodies it as a broadly-based freedom that encompasses all modes of transport. Its explicit articulation in the Articles of Confederation became implicit in the Privileges and Immunities Clause of the Constitution. Contrary to the appellate "single mode doctrine," abridgement of any mode of transportation undermines the constitutionally enshrined travel right. The U.S. Supreme Court needs to rearticulate an originally consistent and politically robust multi-modal right to travel.

INTRODUCTION: TRAVEL AS A FUNDAMENTAL RIGHT OF CITIZENSHIP

As a foundational political liberty that precedes the adoption of the U.S. Constitution, the right to travel in the United States is inherent both in citizenship and in the nature of the federal union. The Constitution and the U.S. Supreme Court recognize and protect the right to interstate travel.[1]

The travel right empowers U.S. citizens to move interstate without abridgement by government interference. Laws and regulations that impede citizens' ability to exercise a fundamental right like travel to preserve another like privacy are inherently suspect. The Ninth Circuit stated in *United States v. Davis*, "exercise of the constitutional right to travel may not be conditioned upon the relinquishment of another constitutional right absent a compelling state interest."[2]

The original conception of the travel right is explicitly stated in Article IV of the Articles of Confederation and remains in force in the parallel article of the U.S. Constitution. Travel embodies a broadly based personal, political, and economic right that encompasses all modes of transportation and movement. Abridgement of any mode violates the right. The so-called "single mode doctrine," constructed by some circuit courts truncates the plenary scope of the travel right.[3] The imposition

---

1. *See* Saenz v. Roe, 526 U.S. 489, 498 (1999) (noting that the right to travel is "firmly embedded" within the jurisprudence of the Supreme Court); Shapiro v. Thompson, 394 U.S. 618, 630 (1969); RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 4.8 (4th ed. 2007).

2. United States v. Davis, 482 F.2d 893, 913 (9th Cir. 1973).

3. *See* John Doe No. 1 v. Ga. Dep't. of Pub. Safety, 147 F. Supp. 2d 1369, 1375 (N.D. Ga. 2001) ("[T]he denial of a single mode of transportation does not rise to the level of a violation of the fundamental right to interstate travel."); s*ee, e.g.*, Town of Southold v. Town of East Hampton, 477 F.3d 38, 54 (2d Cir. 2007); Gilmore v. Gonzales, 435 F.3d 1125, 1137 (9th Cir. 2006); Duncan v. Cone, 2000 WL 1828089 (6th Cir. 2000); Miller v. Reed, 176 F.3d 1202, 1205 (9th Cir.1999); Houston v. F.A.A., 679 F.2d 1184, 1198 (5th

of governmental requirements, such as official photo identification for travel, watch-list prescreening programs, no-fly lists, and intrusive airport scanning and searches, unreasonably burden the right to travel in privacy.

This Article traces the development of the travel right from its robust early conceptualization to its modern-day misconstruction. Part I presents the historical origins of the travel right. Part II conceptualizes the historic travel right around privacy concerns for the modern era. Part III critiques unjustified circuit court limitations on the rights to travel and privacy in a surveillance age. The Conclusion argues that the Supreme Court needs to reconstruct and rearticulate an originally consistent and expansive right to travel.

I. THE HISTORICAL ORIGINS OF THE RIGHT TO TRAVEL

The right to travel precedes the American union and the U.S. Constitution. In shaping medieval English law in 1215, the Magna Carta articulated travel rights for personal liberties and unfettered commerce in assuring "merchants are . . . safe and secure in . . . traveling in England."[48] Blackstone's 1795 *Commentaries on the Laws of England* identified freedom of movement as a natural liberty inherent by birth.[5] "This personal liberty consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct, unless by due course of law."[6] Blackstone defined it as a "strictly natural" right.[7]

The right to travel pervades U.S. history. In 1770, Thomas Jefferson argued that freedom of movement is a personal liberty by birth. "Under the law of nature, all men are born free, everyone comes into the world with a right to his own person, which includes the liberty of moving and using it at his own will. This is what is called a personal liberty."[8] The appearance in Article IV of the Articles of Confederation in 1777 of a right to travel informed its implicit incorporation in the

---

Cir. 1982); Monarch Travel Servs., Inc. v. Associated Cultural Clubs, Inc., 466 F.2d 552, 554 (9th Cir. 1972).

4. PETER LINEBAUGH, MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL 179 (2008); NICHOLAS VINCENT, MAGNA CARTA, A VERY SHORT INTRODUCTION, 118 (2012) ("All merchants are to be safe and secure in leaving and entering England, and in staying and traveling in England . . . ").

5. *See generally* SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND: BOOK THE FIRST OF THE RIGHTS OF PERSONS (1765).

6. *Id.* at 130. The Delaware Chancery Court agreed with Blackstone, in *Douglass v. Stephens*, and established that freedom of movement is fundamental for "the enjoyment and defense of liberty." Douglass v. Stephens, 1 Del. Ch. 465, 471 (1821).

7. BLACKSTONE, *supra* note 5, at 130.

8. THOMAS JEFFERSON, ARGUMENT IN THE CASE OF HOWELL V. NETHERLAND, THE WRITINGS OF THOMAS JEFFERSON 474 (1892).

Privileges and Immunities Clause of Article IV of the U.S. Constitution in 1789. In short, the Confederation travel right was fundamentally inaugurated for the founding era and beyond.[9]

> The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States . . . shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce. . . . [10]

Early courts explicated this broad conception. In the 1823 decision, *Corfield v. Coryell*,[11] the Supreme Court recognized the travel right in explaining the relationship between the "free ingress and regress" clause in Article IV of the Articles and the Privileges and Immunities Clause in the Constitution.[12] The Court affirmed that the privileges and immunities of citizenship encompass "the right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuit, or otherwise."[13] The imperative of free interstate travel was "better to secure and perpetuate mutual friendship" of the states.[14] Moreover, in 1824, the Supreme Court established in *Gibbons v. Ogden*, that commerce, as intercourse between the states, encompasses a right from the creation and adoption of the U.S. Constitution.[15]

The original expansive conception of the right to travel encompasses all available modes of transportation. The 1831 Court ruling in *Beckman v. Saratoga & Schenectady Railroad* established that whenever there is a compelling public interest in a technology available to the public, for instance, a new mode of transport like railways, then all citizens are equally entitled to enjoy its benefits and to access it and its instrumentalities.[16] This ruling established transportation service providers as common carriers,[17] and scheduled passenger transport of various kinds.

---

9. ARTICLES OF CONFEDERATION of 1781, art. IV.
10. *Id.*
11. Corfield v. Coryell, 6 F.Cas. 546, 550-51 (C.C.E.D. Pa. 1823).
12. U.S. CONST. art. IV, § 2.
13. *Corfield*, 6 F.Cas. at 552.
14. *Id.* (citing ARTICLES OF CONFEDERATION of 1781, art. IV).
15. Gibbons v. Ogden, 22 U.S. 1, 193(1824).
16. Beckman v. Saratoga & Schenectady R.R., Co., 3 Paige Ch. 45, 45 (N.Y. 1831).
17. "[T]he public [has] an interest in the use of the road, and the owners of the franchise are liable to respond in damages, if they refuse to transport an individual or his property upon such road, without any reasonable excuse, upon being paid the usual rate of fare." *Beckman*, 3 Paige Ch. at 75; *see* the section herein on common carriage and travel rights.

THE RIGHT TO TRAVEL ACROSS THE UNITED STATES

The right to interstate travel has connected the parts of the nation since its founding. Travel is fundamental and structural to maintaining a strong political and economic union of sovereign states. As Ronald Kahn articulated, "The [Supreme] Court views the concepts of the federal union and personal liberty rights in the Constitution as closely related. Their union requires that all citizens be free to travel, uninhibited by regulations that unreasonably burden their movement."[18]

Because the national government does not possess "general police power," its authority is restricted to what the Constitution expressly grants it.[19] The Ninth and Tenth Amendments reserve all other unenumerated rights to the states and the people to ensure that citizens may not be deprived of those rights not delegated to the federal and state governments without due process under the Fifth and Fourteenth Amendments.[20] The right to travel, inherent in intercourse among the states, is one of the implied and unemunerated rights reserved to the People.[21]

The 1849 *Passenger Cases* declared the right to travel may be exercised without interference. The Court established that state taxation of imports and exports unconstitutionally imposed on commerce and interstate travel.[22] It ruled against New York and Massachusetts' imposition of taxes on alien passengers arriving from ports out of state.[23] To ensure uniform treatment of citizens across the states, and to bind together the Union, the Constitution empowered Congress alone with the power to regulate commerce between the United States and among the States.[24]

The right to travel is "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[25] The 1867 case of *Crandall v. Nevada*, for example, recognized that necessity for interstate travel to exercise other personal rights and liberties. A Nevada-imposed fee constituted "a tax on the passenger for the privilege of passing

18. RONALD KAHN, THE SUPREME COURT AND CONSTITUTIONAL THEORY, 1953-1993 50 (1994).

19. *See, e.g.*, LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 5-2 (1988).

20. *See* Griswold v. Connecticut, 381 U.S. 479, 487 (1965) (Goldberg, J., concurring); McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 372, (1819) (argument of counsel).

21. *See, e.g.*, Crandall v. Nevada, 73 U.S. 35, 48-49 (1867); Shapiro v. Thompson, 394 U.S. 618, 629-31 (1969).

22. The Passenger Cases, 48 U.S. 283, 283 (1849).

23. Congress may impose taxes on common carriers and ports. However, these taxes are regulated and uniform throughout the nation since, in accordance to the Constitution: "all duties, imposts and excises shall be uniform throughout the United States." U.S. CONST. art. 1, § 8, cl.1.

24. *The Passenger Cases*, 48 U.S. at 492 (Taney, C.J., dissenting).

25. Griswold v. Connecticut, 381 U.S. 479, 493 (1964) (citing Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)).

through the State by the ordinary modes of transportation."[26] Even one state's imposition of a tax on those leaving the state could weaken the federation of states. "If one State can [levy such a tax], so can every other State. And thus one or more States covering the only practicable routes of travel from the east to the west, or from the north to the south, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other."[27]

The *Crandall* court determined that Nevada's imposition of a per passenger tax on railroad or stagecoach companies for passengers transported out of the state unconstitutionally limited citizens' right to travel.[28] The tax levied by Nevada on passengers for the privilege of passing through the state unconstitutionally burdened the travel right.[29] "We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States."[30] The tax hindered citizens' exercise of other fundamental rights, such as approaching the government for redress of grievances and accessing ports where commerce was conducted.[31]

As in *Corfield v. Coryell, The Slaughter House Cases*[32] in 1873 affirmed the right to travel by determining that "the privileges and immunities intended [in Articles IV of the Articles of Confederation and U.S. Constitution] are the same in each."[33] By asserting such a close link, the Court confirmed the right to interstate travel is protected, as in the Articles of Confederation, by the Constitution's Commerce Clause and as a Privilege and Immunity of citizens under Article IV.[34] In *Williams v. Fears*, the Supreme Court in 1900 declared, "[u]ndoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily of free transit from or through the territory of any State is a right secured by the 14th amendment and by other provisions of the Constitution."[35]

---

26. Crandall v. Nevada, 73 U.S. 35, 49 (1867).
27. *Id.* at 35.
28. *Id.* at 44-45.
29. The Court described the tax power as "being in its nature unlimited," and interfering with powers of the federal government. *See id.* at 36, 46-48.
30. *Id.* at 49.
31. *See id.* at 43-44.
32. *The Slaughter House Cases*, 83 U.S. 36, 79 (1873).
33. *Id.* at 75.
34. *See generally* Ward v. Maryland, 79 U.S. 418 (1870); Hoxie v. New York, N.H. & H.R. Co., 82 Conn. 352 (1909).
35. Williams v. Fears, 179 U.S. 270, 274 (1900), *quoted in* Schactman v. Dulles, 225 F.2d 938, 944 (1955).

Complementing Fifth Amendment due process guarantees,[36] the Court established in *Edwards v. California* in 1941 that the Fourteenth Amendment extends due process protections to all citizens of the United States.[37] It thereby protects citizens from infringement by states and the federal government. In concurring, Justice Douglas held that "the right of persons to move from state to state occupies a more protected position in our constitutional system . . . "[38] As the Supreme Court affirmed in 1958 in *Kent v. Dulles*, "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law."[39]

In 1966 in *United States v. Guest*, the Court rearticulated that the Constitution did not explicitly mention the right to travel because:

> a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. . . . The constitutional right to travel from one State to another . . . occupies a position so fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. . . .[40]

Indeed, *Guest* affirmed "[t]he constitutional right of interstate travel is virtually unqualified."[41] Today the travel right remains crucial to the formation and ongoing prosperity of the political union and common market.

The importance of such connectivity appears in *Shapiro v. Thompson* in 1969.[42] The *Shapiro* Court stated:

> This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.[43]

The *Shapiro* decision highlighted that "[t]his constitutional right . . . is not a mere conditional liberty subject to regulation and control under conventional due process or equal protection standards." Furthermore, the decision reaffirmed the right to travel, as "a right broadly assertable

---

36. *See, e.g.,* United States v. Guest, 383 U.S. 745, 759 n.17 (1966); Kent v. Dulles, 357 U.S. 116, 125 (1958).

37. Edwards v. California, 314 U.S. 160, 176 (1941).

38. *Id.* at 177.

39. *Kent*, 357 U.S. at 125.

40. *Guest*, 383 U.S. at 757-58.

41. *Id.*

42. *See generally* Shapiro v. Thompson, 394 U.S. 618 (1969). As Justice Brennan added in his concurrence in *Zobel v. Williams*, the origin of the travel rights' "unmistakable essence [is] that document that transformed a loose confederation of States into one Nation." Zobel v. Williams, 457 U.S. 55, 67 (1982) (Brennan, J., concurring).

43. *Shapiro*, 394 U.S. at 629.

against private interference as well as governmental action."[44] In short, the travel right protects against both restrictive public and private actions, and it empowers those availing themselves of the right's protections. The right to travel constitutes a fundamental freedom government may not abridge.

Quoting *Guest* in *Dunn v. Blumstein* in 1972, the Supreme Court ruled that, "freedom to travel throughout the U.S. has long been recognized as a basic right under the Constitution."[45] The *Dunn* court held, "since the right to travel was a constitutionally protected right, any classification which serves to penalize the exercise of the right . . . is unconstitutional."[46]

The Court more recently affirmed the fundamental constitutional right to travel in 1999 in *Saenz v. Roe*.[47] The first of three components is most relevant to interstate travel: "citizens have the right to enter and leave another State."[48] The decision held unconstitutional a state welfare statute that discriminated against new residents.[49] The ruling agreed with *Shapiro* in that "a classification that has the effect of imposing a penalty on the right to travel violates the Equal Protection Clause 'absent a compelling governmental interest.'"[50] While *Saenz* focused on state-to-state travel, the holding was not specific to states alone. Thus, the case features a travel right that extends across the nation.

Travel is an instrumentality of commerce that Congress may regulate in order to encourage commercial activities and intercourse. *Kent* established that the Interstate Commerce Clause[51] protects interstate travel and its instrumentalities against governmental infringement.[52] *Guest* affirmed "[t]he constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities

---

44. *Id.* at 630-31.

45. Dunn v. Blumstein, 405 U.S. 330, 338 (1972); United States v. Guest, 383 U.S. 745, 758 (1966).

46. *Dunn*, 405 at 338-39 (striking down a residency requirement restricting voting rights).

47. *See generally* Saenz v. Roe, 526 U.S. 489 (1999).

48. *Id.* at 500.

49. *Id.* at 507-08.

50. *Id.* at 490.

51. U.S. CONST., art. I, § 8, cl. 3; *see* Daniel A. Farber, *National Security, the Right to Travel, and the Court*, 1981 SUP. CT. REV. 263, 263-87 (1981).

52. President Woodrow Wilson would not abridge American citizens' rights to travel and engage in commerce, even during wartime. Responding to Senator W. J. Stone's letter that "this government tak[e] definite steps toward preventing American citizens from embarking upon armed merchant vessels," Wilson wrote, "[f]or my own part, I cannot consent to any abridgement of the rights of American citizens in any respect. . . . To forbid our people to exercise their rights for fear we might be called upon to vindicate them would be a deep humiliation indeed." *President Wilson's Letter to Senator Stone Announcing His Stand on Armed Liner Issue*, N.Y. TIMES, Feb. 25, 1916.

of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized."[53] The right to interstate commerce encompasses both the freedom of movement and the instrumentalities of transportation needed to so move.

Congress may not pass legislation that unreasonably burdens the right to travel. "One has the right, as against any prohibitory or other restrictive legislation, whether by Congress,[54] or by the States, to engage in the interstate or foreign commerce, that is, to transport persons or articles from State to State, or to or from a foreign country."[55] Thus, Congress must not infringe citizens' travel rights.

The travel right ensures the vitality of the government through the free movement of citizens in purposive travel. Specifically, the right preserves and facilitates citizens' ability to journey to their representative seats of government, both statewide and nationally, in order to petition under the First Amendment to have their grievances redressed. Foreclosing such a right would have offended the Founders in their suspicion of governmental overreaching into citizens' rights. Therefore, the Founders laid down protections for political speech and association inherent in the travel right. Even in an era of few travel modes, the Founders conceived the travel right as broad and plenary.

Consequently, domestic requirements for passports, identification, or permits for traveling in the United States hamper exercising the right to interstate travel. They also invert the proper consent relationship between citizens and government.[56] Government derives its "license" to operate from the people: when the government instead requires the people to obtain or present a license in order to travel domestically, it abrogates foundational rights. As Justice Ginsburg stated in a public forum: "[t]here is a right to travel. We have had a common market in that respect from the very beginning; you can go from one state to another without any passport."[57]

---

53. United States v. Guest, 383 U.S. 745, 758 (1966).

54. "Congress can set the regulations, conditions, or prohibitions regarding the permissibility of interstate travel or shipments if the law does not contravene a specific constitutional guarantee." ROTUNDA & NOWAK, *supra* note 1.

55. Frederick H. Cooke, *The Right to Engage in Interstate and Foreign Commerce as an Individual or as a Corporation*, 8 MICH. L. REV. 458, 459 (1910).

56. Richard Sobel & John A. Fennel, *Troubles with Hiibel: How the Court Inverted the Relationship between Citizens and the State*, 48 S. TEX. L. REV. 613, 639 (2007).

57. Associate Justice Ruth Bader Ginsburg, Remarks at the Northwestern University Law School (Sept. 15, 2009), *available at* http://www.c-spanvideo.org/program/288900-1 (responding in a public discussion to a question by Dr. Richard Sobel); *see* Louis Brandeis & Samuel Warren, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890); *see also* Olmstead v. United States, 277 U.S. 438, 471-85 (1928) (Brandeis, J., dissenting); *see also* MELVIN UROFSKY, LOUIS D. BRANDEIS: A LIFE 562 (2009) (quoting Brandeis that the Fourteenth Amendment protects the right to travel: "the 14th

In short, the right to travel preceded modern means of transportation like railroads and airplanes. It was conceived as an inherent liberty within citizenship, personhood, and union. The right was not linked to a particular instrumentality for exercise of personal liberty. Accordingly, the right to travel is not tied to any specific mode of transportation. Consequently, it encompasses all means of travel.

THE RIGHT TO TRAVEL AS A FOUNDATION FOR CITIZENS AND UNION

From the perspective of individual rights, the ability to move freely in the United States is a personal liberty, inherent by birth and U.S. citizenship. The travel right is essential to guaranteeing equality of opportunities, and *the pursuit* of happiness for citizens of the federal union. Freedom of personal movement is a natural liberty that citizens exercise among fundamental rights and privileges.

Moreover, the right to interstate travel encompasses rights and privileges to personal, political, and commercial movement. This interconnection between the right of individuals and the character of the nation guarantees unrestricted geographical mobility to citizens in the American political and economic union. The right to interstate travel is based on the Founders' desire to structure a federal union under the Constitution to create a strong political union and a common market composed of sovereign states. By "place[ing] the citizens of each State upon the same footing with citizens of other States . . . ,"[58] the Privileges and Immunities Clause in Article IV of the U.S. Constitution guarantees the freedom to move from state to state and set up residence anywhere in the country. In securing that liberty, citizens of one state are entitled to the same privileges and immunities as the citizens of any other state.

An essential element in the notion that the states belong to a more perfect union manifests itself in the right to travel between the states on a basis of equality.[59] The Court recognized that without this constitutive dimension, "the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."[60] Therefore, the right to travel is fundamental and structural to

---

amendment due process clause . . . had to be applied . . . to protect . . . fundamental rights—speech, education, choice of profession, and the right to travel . . . ").

58. Paul v. Virginia, 75 U.S. 168, 180 (1869); *see* Sonia Sotomayor, *Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights*, 88 YALE L. J. 825, 835-51 (1979); *see also* Associate Justice Sonia Sotomayor, Address at the Northwestern University Law School (Mar. 7, 2011) (distinguishing travel rights for constitutional versus statutory citizenship).

59. Seth F. Kreimer, *The Law of Choice and Choice of Law: Abortion, the Right to Travel, and Extraterritorial Regulation in American Federalism*, 67 N.Y.U. L. REV. 451, 519 (1992).

60. *Paul,* 75 U.S. at 180.

a larger union because without it, the founding vision of a transcontinental nation could not be attained.

As a commercial union, the United States is a common market that enjoys the right of free interstate movement of people and goods in order to guarantee economic prosperity of the political union. The Founders had a desire to create one nation with regard to economic movement and change. Thus, the Founders established national control of commerce[61] to enable individuals to move from state to state for economic reasons.[62] In short, the commercial and political intersect.

American political history and Supreme Court jurisprudence crafted the right to travel as a fundamental one accruing naturally to every U.S. citizen and to the nation. The Court has consistently recognized a right to travel as one of citizenship preceding and contributing to the establishment of a federal constitution. Although the text of the Constitution no longer explicates the right to travel, Articles I and IV, and the First, Fifth, Ninth, Tenth, and Fourteenth Amendments protect the right. Here, facilitation of imports and exports (Article I, Section 9) coincides with the Privileges and Immunities of citizens of all states (Article IV). Due process and equal protection (Fifth and Fourteenth Amendments) intersect with rights reserved to the people and states (Ninth and Tenth Amendments).[63] In short, multiple constitutional provisions underlie and ally with the right to travel and related rights.

---

61. *See* U.S. CONST., art. I, § 8 (enumerating the powers of Congress to regulate commerce under § 9).

62. KAHN, *supra* note 18, at 39.

63. Freedom of movement within a country is internationally recognized as a right and embodied in national constitutions. *See* CONSTITUCIÓN POLÍTICA DE LOS ESTATOS UNIDOS MEXICANOS [C.P.] art. 11 (the right to travel is embedded in the Mexican Constitution, Article 11, guaranteeing the right of any person to enter, leave, or travel within the Mexican territory without the need of any means of identification); *see e.g*, Grundgesetz Fur Die Bundesrepublik Deutschland [GG] (GER), INDIA CONST., CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), CONSTITUCIÓN ESPAÑOLA [C.E.] (Spain), CONSTITUTION OF ROMANIA, USTAV REPUBLIKE HRVATSKE (Croat.), CONSTITUTION OF THE REPUBLIC OF TURKEY, and S. AFR. CONST (providing for the right to move freely within the respective countries). For the right to travel recognized in international law *see American Declaration of the Rights and Duties of Man*, OEA/Ser.L./V.II.23, doc. 21, rev. 6 (1948) (noting the right to travel in the Organization of American States); *see also Universal Declaration of Human Rights*, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) (discussing right to travel in Article 12); *see also* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222; *see also* The Helsinksi Act, Aug. 1, 1975, 14 I.L.M. 1292 (the United States and thirty-five countries are signatories); *see also* African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217; *see also* International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171.

II. THE MODERN CONTEXT OF THE RIGHT TO TRAVEL

Fundamental rights must expand to encompass new technologies, and case law needs to evolve by retaining the essence of the basic protections. When the right to travel appeared in the Articles of Confederation, for example, it preceded the formulation of the related right to privacy. Yet, the expansive nature of the travel right drives the construction of privacy provisions. The travel right also preceded and catalyzed progressive non-discrimination policies included in current federal definitions of and access to common carriers. There, the government sought equal and uniform protection of rights to common carriage. The evolution of privacy and other rights parallels the protections inherent in the right to travel. Evolution may not, in short, fundamentally alter the original rights.

INTERSECTION OF THE RIGHT TO TRAVEL AND THE RIGHT TO PRIVACY

In a parallel path to the travel right, the right to privacy has evolved from a focus on the protection of an individual's physical property[64] to encompass a broader swath of privacy safeguards and expectations pertaining to an individual as a constitutionally-protected person in both private and public.[65] The oldest protections to personal privacy resides in the Fourth Amendment safeguards against unreasonable searches and seizures without probable cause of criminal activity.[66] These protections now intersect with travel rights.

The fundamental right to privacy protects individuals' choices to conduct their personal lives free from governmental interference.[67] In *Griswold* v. *Connecticut*, the Court established that the right to privacy protects individuals engaging in private acts from government

---

64. *See*, *e.g.,* Boyd v. United States, 116 U.S. 616, 622-23 (1886) (recognizing that a search and seizure was equivalent to a compulsory production of a man's private papers and was unreasonable within the meaning of the Fourth Amendment).

65. *See, e.g.,* Griswold v. Connecticut, 381 U.S. 479 (1964).

66. J. NOWAK & R. ROTUNDA, CONSTITUTIONAL LAW 734-35 (2d ed. 1983) ("the oldest constitutional right to privacy is that protected by the Fourth Amendment's restriction on governmental searches and seizures."); *see generally* Richard Sobel, Barry Horwitz, & Gerald Jenkins, *The Fourth Amendment beyond Katz, Kyllo and Jones: Reinstating Justifiable Reliance as a More Secure Constitutional Standard for Privacy*, 22 B.U. PUB. INT. L.J. 1 (2013).

67. Meyer v. Nebraska, 262 U.S. 390, 402-03 (1923) (using the right to privacy to protect the freedom of schools to teach subjects in languages other than English); *see* Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925) (using the right to privacy to protect parents' decision to have their children attend private schools); *see, e.g.*, Lawrence v. Texas, 539 U.S. 558 (2003); *see, e.g.,* Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (to protect the intimate and family lives of citizens).

interference.[68] The "emanations" of several constitutional rights protect a range of privacy interests.[69]

These constitutional rights also protect the right to privacy in travel.[70] The right to travel entails the right to privacy in its fundamental elements of individual choice regarding when, where, and how to move.[71] The intersection of the right to travel and the right to privacy as fundamental liberties allow individuals to engage in private and anonymous travel. Indeed, anonymous travel represents the concurrent exercise of these overlapping personal liberties.

The right to travel in anonymity, without having to identify oneself or carry identification documents, was articulated clearly in *Kolender v. Lawson*.[72] Edward Kolender was an African-American who frequently walked in white California neighborhoods where police repeatedly stopped, asked him for identification, and at times arrested him, even though he was pursuing legal activity.[73] In *Kolender*, the Court struck down the California statute that required "persons who loiter or wander on the streets to provide a 'credible and reliable' identification and to account for their presence when requested by a peace officer."[74] The Court invalidated the statute on the basis that it was "constitutionally vague within the meaning of the Due Process Clause of the Fourteenth Amendment by failing to clarify what is contemplated by the requirement that a suspect provide a 'credible and reliable' identification."[75]

The basis of *Kolender* on vagueness affirmed the Ninth Circuit's judgment that the statute violated the Fourth Amendment. "The appellate court determined that the statute was unconstitutional in that it violates the Fourth Amendment's proscription against unreasonable searches and seizures, it contains a vague enforcement standard that is susceptible to arbitrary enforcement, and it fails to give fair and adequate notice of the type of conduct prohibited."[76]

---

68. *Griswold*, 381 U.S. at 483; *see* Roe v. Wade, 410 U.S. 113, 153 (1973); *see also* Planned Parenthood v. Casey, 505 U.S. 822, 851 (1982) (upholding the bodily autonomy of individuals); *see also* Oral Argument Transcript at 43, Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S.Ct. 2566 (Mar. 27 2012) (referencing "means of travel").

69. *See* Doe v. Bolton, 410 U.S. 179, 209 (Douglas, J., concurring).

70. *See supra* Part I.

71. Kent v. Dulles, 357 U.S. 116, 125-26 (1958); Shapiro v. Thompson, 394 U.S. 618, 629 (1969). *Kent* and *Shapiro* established that the right to travel must be free from government interference, thus associating the right to privacy with the exercise of the right to travel. *Kent*, 357 U.S. at 125-26; *Shapiro*, 394 U.S. at 629.

72. Kolender v. Lawson, 461 U.S. 352, 353-54 (1983).

73. *Id.*

74. *Id.* at 353.

75. *Id.* at 353-54.

76. *Id.* at 355.

Moreover, in a telling concurrence, Justice Brennan clarified that the demand for identification was a search when he held that even if the statute had not been vague, it would still have violated the Fourth Amendment.[77] "Even if the defect identified by the Court were cured, however, I would hold that this statute violates the Fourth Amendment" because "States may not authorize the arrest . . . for failing to produce identification."[78] In short, the *Kolender* court struck down the requirement to provide identification when involved in legal behavior.

In *Hiibel v. Nevada*, the Supreme Court reaffirmed that unless there is reasonable suspicion of a crime and a state law requiring identification under that circumstance, police may not require individuals to provide identification.[79] Like previous cases where, for instance, Kolender had simply been walking, Hiibel was a pedestrian at roadside when confronted by the officer, though first pursued under reasonable suspicion based on an observer's report that an assault had been observed in a motor vehicle.[80] The Nevada statute, the Supreme Court ruled 5-4, required Hiibel to disclose his name, but not to produce an identification document.[81] Nonetheless, contrary to *Kolender,* the demand in *Hiibel* to produce a name as identification contradicts the now-famous principles in *Miranda v. Arizona*[82] and a series of cases of strong dicta that protect the right to remain silent.[83]

Thus, an individual moving around has the right to be private and anonymous in his or her affairs, free from government intrusion. Hence, the demand for identification, without probable cause that the individual is engaging in an illegal activity, interferes not only with privacy, but also with travel rights. In short, the travel right entails the right to privacy, and it encompasses freedom to travel anonymously and free

---

77. *Id.* at 362 (Brennan, J., concurring).
78. Kolender v. Lawson, 461 U.S. 352, 362 (1983) (Brennan, J., concurring).
79. Hiibel v. Sixth Jud. Dist. Ct. of Nev., 542 U.S. 177, 185 (2004).
80. *Id.* at 177.
81. *Id.* at 185.
82. *See generally* Miranda v. Arizona, 384 U.S. 436 (1966).
83. *See* Sobel & Fennell, *supra* note 56, at 618 (discussing the right to remain silent); *see* Terry v. Ohio, 392 U.S. 1, 34 (1968) (White, J., concurring) (discussing that "the person may be briefly detained against his will while pertinent questions are directed to him. Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest"); *Kolender*, 461 U.S. at 365 (noting that a *Terry* suspect "must be free to leave after a short time and to decline to answer the questions put to him") (Brennan, J., concurring); Berkemer v. McCarty, 468 U.S. 420, 439-40 (1984) (stating that the "officer may ask the . . . detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond"); Illinois v. Wardlow, 538 U.S. 119, 125 (2000) (explaining that stopping a fleeing suspect "is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning").

from governmental infringement.[84]

In *The Right of Mobility*, Gerald Houseman identifies how the right to travel is essential for the exercise of other fundamental rights, including employment.[85] "Mobility is a right which makes many other rights we hold dear both tenable and possible—the rights of association, privacy, and equality of opportunity, for example."[86] He notes, a national identification system, including worker identification cards, constitute an "internal passport" which he calls the "hallmark of repressive regimes such as [Apartheid] South Africa, the [former] Soviet Union, or Nazi Germany."[87]

In the concurrent exercise of two fundamental rights, one right, for example travel (or employment, often travel-related), may not be conditioned on abrogating another right like privacy.[88] In summary, travel and privacy rights are intimately linked in their constitutional protections.

COMMON CARRIAGE IN TRAVEL RIGHTS[89]

The travel right also includes the right to movement on common carriers. "A carrier becomes a common carrier when it 'holds itself out' to the public, or to a segment of the public, as willing to furnish transportation within the limits of its facilities to any person who wants it."[90] That means that any individual or corporation becomes a common carrier by promoting to the public the ability and willingness to provide

---

84. GERALD L. HOUSEMAN, THE RIGHT OF MOBILITY 7 (1979). In the late 1970's, Congress first considered establishing "a system of 'forgery-proof' Social Security cards, complete with photographs . . . for everyone entitled to have one." *Id.* While its sponsors denied "that this could easily be turned into a national identification system, it is not difficult to imagine this being done in the name or bureaucratic efficiency, national security, or . . . to snoop and perhaps to limit mobility." *Id.* at 17. Houseman identified the proposed Social Security card as a national passport – internal passport – acting as a work ID. *Id.* "Any potential employer must then refuse to hire anyone who fails to produce this card." *Id.* at 42. Houseman argues that a national ID system confronts the American with "a totalitarian potential of invasion of privacy, harassment, and denial of mobility." *Id.* at 43. A national ID can easily become an internal passport as an instrument of "mobility control" and feature of totalitarian governments. *Id.*

85. *Id.*

86. *Id.* at 17.

87. *Id.*

88. United States v. Davis, 482 F.2d 893, 913 (9th Cir. 1973); *see also* United States v. Kroll, 481 F.2d 884, 886 (8th Cir.1973).

89. *See* Ramon L. Torres, The Right to Travel: Intersection with the Right to Privacy and a Personal Liberty (2010) (unpublished Master's Thesis, Northwestern University) (on file with author).

90. WILLIAM T. BRENNAN, FED. AVIATION ADMIN., PRIVATE CARRIAGE VERSUS COMMON CARRIAGE OF PERSONS OR PROPERTY, (Apr. 24, 1986), *available at* http://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-12A.pdf.

transportation service, including air travel.[91]

Air transport providers operating in, to, or from the United States act under common carrier rules.[92] "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."[93] If there are available places, the charge is paid, and there are no reasonable grounds to refuse the service to an individual, the air carrier is legally bound to provide the transportation of passengers or goods. Denying someone passage violates federal law.[94]

The national government has broad federal jurisdiction.[95] When vehicles engage in commerce, the United States has jurisdiction over them, even if they travel outside the specific U.S. areas.[96] Under aircraft jurisdiction in *Special Aircraft Jurisdiction of the United States*, the U.S. government exercises national jurisdiction over its territory and "in-flight" aircraft, even outside national airspace.[97] Thus, travel conducted between contiguous and non-contiguous United States by air remains within national jurisdiction. And its regulation requires following U.S. federal law and rules, the Constitution, and specific rights and privileges of citizenship. Accordingly, the expansiveness of this

---

91. *But see* Gonzales v. Williams, 192 U.S. 1, 13 (1904). In the related series of "Insular Cases," the Court considered whether or not to extend full constitutional protection to territories the United States gained in the Spanish-American War; it distinguished between travel rights for continental versus territorial citizens, *e.g.* a U.S. citizen traveling from the non-continental U.S. (e.g., Alaska or Hawaii) to the continental part would have more rights than a citizen of a territory or commonwealth like Puerto Rico traveling to the continental U.S. The distinction depends partly on the difference between birth, naturalized or granted (statutory) citizenship. *See generally* De Lima v. Bidwell, 182 U.S. 1 (1901); Goetze v. United States, 182 U.S. 221 (1901); Dooley v. United States, 182 U.S. 222 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. N.Y. & Peurto Rico Steamship Co., 182 U.S. 392 (1901); *see also* SONIA SOTOMAYOR, MY BELOVED WORLD 179 (2013).

92. Brennan, *supra* note 90.

93. 49 U.S.C. § 40127 (2006).

94. *Id.*

95. *See* 18 U.S.C. § 7 (2006) (defining "Special Maritime and Territorial Jurisdiction of the United States" and concluding that the United States has federal jurisdiction over their territory and any vessel registered, licensed, or enrolled under the United States).

96. *See* 49 U.S.C. §§ 10501, 13502(a), 13521(a) (2006). Rail vehicle carrier, motor carrier, and water carrier operations are subject to U.S. jurisdiction when operating within the area defined in 18 U.S.C. § 7 (2006) and outside it when traveling to/from/between U.S. destinations. *Id.* Motor carriers are exempt when traveling through Canada between Alaska and the contiguous United States. *Id.* at § 13502(a).

97. § 46501(2) (included in the special U.S. jurisdiction are any "in-flight" civil or military aircraft of the United States, as well as any aircraft in the United States, including foreign aircraft that are scheduled to land or last departed from the United States); *see id.* at § 46501 (explaining that an aircraft "in-flight" corresponds to an aircraft from the time the door is closed to when it is opened at the destination; the law also covers any aircraft leased to an American resident or business, even when the lease is made outside the United States and/or using a non-U.S. registered aircraft).

jurisdiction empowers citizens to exercise broadly their right to travel.[98]

Sovereignty and Use of Airspace assigned control of the airspace of the United States to the government, and it guarantees citizens the right to use and access the space.[99] Air commerce and safety regulations establish an air transportation network consistent with public convenience and necessity.[100] The air travel network is a part of the public infrastructure open for wide use and enjoyment. The national government advances these goals by ensuring by law that all citizens have adequate access to the air system.

U.S. law, pursuant to 49 U.S.C. § 40103, pertaining to sovereignty and the use of airspace holds under "Sovereignty and Public Right to Transit" that (1) "[t]he United States Government has exclusive sovereignty of airspace of the United States; (2) [a] citizen of the United States has a public right of transit through the navigable airspace."[101] Moreover, 49 U.S.C. § 40101, "Policy," notes under "General Safety Considerations" that in carrying out regulation, the administrator for the Federal Aviation Administration (FAA) shall consider "the public right to freedom of transit through the navigable airspace."[102] Therefore, under not only general U.S. sovereignty but also the public right of transit, freedom of travel includes air travel.

THE INFIRMITIES OF THE "SINGLE MODE DOCTRINE"

Historically and fundamentally, the right to travel in the United States is broad and encompasses all modes of transportation. In conflict, however, with the nature of this expansive right in a large Union, some circuit courts have maintained that limitations on one mode of transportation do not implicate the right to travel. A modern construction that inaptly degrades the travel right, however, is the so-called "single mode doctrine," which maintains that if someone can travel by any mode of transportation, his right to travel is sustained.[103]

---

98. This is applicable when travel adheres to the U.S. Code statutes for the mode of transportation. The same also applies to travel on common carriers by ground or water. The U.S. Code for transportation of goods and passenger differs across modes of transportation. Rail, coach buses, aircraft, and ships have different sets of rules and different situations where American jurisdiction applies. A motor coach, for example, is outside U.S. jurisdiction when traveling in or through Canada, even if the trip starts and ends in the United States.

99. § 40103(a)(2).

100. § 40101-46507.

101. § 40103.

102. § 40101.

103. *See* John Doe No. 1 v. Ga. Dep't of Pub. Safety, 147 F. Supp. 2d 1369, 1375 (N.D. Ga. 2001) ("[T]he denial of a single mode of transportation does not rise to the level of a violation of the fundamental right to interstate travel.").

In *Monarch Travel Services v. Associated Cultural Clubs* in 1972[104] the Ninth Circuit ruled that the inability of a person to pay the fare of a common carrier in the form of charter flight fees, was not an unconstitutional limitation of the person's travel rights, since there was no state action in government interference.[105] In 1999 in *Miller v. Reed*, the same circuit used the *Monarch* argument to construct what is now known as "the single mode doctrine."[106] The court asserted that "burdens on a single mode of transportation do not implicate the right to interstate travel."[107] Under the construction, Miller was deprived of his privilege to operate a motor vehicle, but not the right to ride as a passenger or to travel by other means.[108] When the circuit court proffered its doctrinal opinion, however, it created an unconstitutional limitation on the fundamental interstate travel right.[109] Moreover, the Ninth Circuit again inappropriately relied on the "single mode doctrine" in *Gilmore v. Gonzales* when it restricted freedom of movement based on John Gilmore's refusal to submit to an identification requirement in order to fly from California to the seat of government in Washington, D.C.[110]

---

104. *See generally* Monarch Travel Serv., Inc. v. Ass'n Cultural Clubs, Inc., 466 F.2d 552 (9th Cir. 1972).

105. The Court only mentioned limitations on travel derived from lack of personal wealth. *Id.* at 554; *see generally* Harris v. McRae, 448 U.S. 297 (1980) (establishing a similar economic argument as *Monarch* in that the government does not have to allocate funds or resources to facilitate the exercise of certain rights).

106. Miller v. Reed, 176 F.3d 1202, 1204 (9th Cir. 1999).

107. *Id. at* 1205.

108. *Id.* at 1206. Miller could still use his personal vehicle, but could not legally drive it, since he had no license (indicating the required skills to do so). He could, however, have someone else drive his vehicle for him. Miller could also ride public transit or other modes of transportation. *Id.*; *see generally* Roger I. Roots, *The Orphaned Right: The Right to Travel by Automobile, 1890-1950*, 30 OKLA. CITY. U. L. REV. 245 (2005) (discussing the right to drive); *see also* Karl Manheim, *The Right to Travel,* CON LAW II BLOG (Nov. 2, 2005), http://manheimk.lls.edu/blog/conlaw2/archives/2005/11/the_right_to_tr.html (noting that due to constitutional right to travel questions and strong protests, drivers were initially neither required to get license plates containing numbers for automobiles nor to obtain licenses to drive them).

109. The Ninth Circuit's holding conflicted with the Supreme Court's emphasis in *Shapiro* that the right to travel should be free of regulations that unreasonably burden or restrict it. *See* Shapiro v. Thompson*,* 394 U.S. 618, 638 (1969).

110. Gilmore v. Gonzales, 435 F.3d 1125, 1136-37 (9th Cir. 2006). However, in *Gilmore*, the government revealed that identification was not absolutely required in order to fly. "The identification policy requires that airline passengers either prevent identification or be subjected to a more extensive search." *Id.* at 1155. Philip Mocek was also arrested for declining to provide identification to fly (and photographing the TSA response) in Albuquerque, New Mexico. In the trial acquitting him on all charges, the government also acknowledged that people can fly on commercial airlines without providing identification. *See State of New Mexico v. Phillip Mocek (2011)*, PAPERSPLEASE.ORG, http://www.papersplease.org/wp/mocek/ (last visited May 25, 2014); *see also* Mocek v. City of Albuquerque, 2013 WL 312881 (D.N.M. Jan. 14, 2013). Commentary on the *Mocek* case notes under, "Do you have a right to travel by air? Answers Yes," how The Airline Deregulation Act of 1978 guarantees the "public right of freedom of transit" by air, and that the

The deficiencies of the "single mode doctrine" are particularly apparent when a citizen needs to travel between the contiguous and the non-contiguous United States.[111] Commercial air service is the only mode of passenger common carrier transportation available between many U.S. locations, especially American states and territories outside the continental union. Particularly for non-continental interstate travel, where the only viable means of travel is by airplane, the "single mode doctrine" imposes on citizens an onerous, unreasonable, and unjustifiable burden.[112] It cannot stand constitutional scrutiny.

In sum, contrary to the Ninth Circuit rulings, burdens on a single mode of transportation do implicate the right to interstate travel. This is clearest when there is only one mode of common carrier travel, such as flying by commercial airline, available between the two non-continental U.S. locations, for instance, between the mainland and Hawaii. It may also be an unconstitutional burden when there is only one practicable mode of travel for long distances. In *Gilmore*, for example, the only way for Gilmore to get to Washington, D.C. from California to petition the federal government in a timely manner was to travel by air.[113]

For non-continental travel, the only other hypothetical way to reach offshore locations is by ship, but commercial ship service by U.S. carriers rarely exists.[114] Here, the "single mode doctrine" proves deficient

---

TSA is required by federal law (49 USC § 40101) to consider this right when it issues regulations. *State of New Mexico v. Phillip Mocek*, PAPERSPLEASE.ORG, http://www.papersplease.org/wp/mocek/ (last visited May 25, 2014). Airlines are common carriers. Mocek's attempted trip was an exercise of "the right . . . peaceably to assemble" as guaranteed by the First Amendment. Freedom of movement is also guaranteed by Article 12 of the International Covenant on Civil and Political Rights, a human rights treaty signed and ratified by the United States. *Id.*; *see also Identity Project tells UN Human Rights Committee that US Violates the Right to Travel*, PAPERSPLEASE.ORG (Jan. 8, 2013), http://www.papersplease.org/wp/2013/01/08/identity-project-tells-un-human-rights-committee-that-us-violates-the-right-to-travel (discussing submissions to the UNHRC); *see also Update to the U.N. Human Rights Committee concerning Violations of the Right to Freedom of Movement (ICCPR Article 12) by the Government of the U.S.A.*, PAPERSPLEASE.ORG (Feb. 10, 2014), *available at* http://papersplease.org/wp/wp-content/uploads/2014/02/idp-iccpr-update-travel.pdf (Identity Project stating to the U.N. Human Rights Committee that the United States violates the right to travel).

111. The United States comprises the forty-eight contiguous states and the non-contiguous U.S. states of Alaska and Hawaii, plus Puerto Rico, Guam, the U.S. Virgin Islands, and other offshore territories.

112. Richard Sobel & Ramon L. Torres, *The Right to Travel*, 80 J. OF TRANSP. L., LOGISTICS & POL'Y 13 (2013).

113. *See Want to Fly? Papers Please*, PAPERSPLEASE.ORG, http://papersplease.org/gilmore/facts.html (last updated Aug. 16, 2006).

114. For example, common carrier passenger ship service does not exist between the continental United States and Puerto Rico. *See Tourist Information*, WELCOME TO PUERTO RICO, http://www.topuertorico.org/tinfo.shtml (last visited May 26, 2014). The Passenger Vessel Services Act of 1886 established that passenger transport within the United States could only be carried out on a U.S. registered vessel. This would make any common-

because burdens imposed on individuals whose only alternative is the one mode of air travel lose entirely their right to interstate travel. Especially in the non-contiguous United States, when a single mode becomes the sole mode of travel, a citizen's constitutional protections for travel are broadest. To be plenary and efficacious, the right to travel must include protections for using all possible modes of travel.

Indeed, the "single mode doctrine" is also inapt for travel within the contiguous United States. This is especially so because of limitations in national air transportation. The general provisions of the *Air Commerce and Safety Regulations*[115] recognize that it is in the public's interest[116] to have an air transportation network. This ensures "the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices."[117] The federal government has invested broadly in creating and maintaining the requisite air network.

As Congress recognized through codification, there is a compelling public interest in maintaining a national air transportation network available to all citizens.[118] Therefore, as in *Beckman v. Saratoga*, the mandate that railroad common carrier services be available to all citizens analogously requires that U.S. air transportation network and air common carrier services be available to all American citizens domestically, regardless of location.[119] The "single mode doctrine" also contravenes this congressional intent.

Air transportation is not only typically the most convenient method of even moderately distant interstate travel, but in many cases, it is the only feasible mode of interstate and in some cases of intrastate travel.[120] The Eighth Circuit held in *United States v. Kroll* that "flying may

---

carrier scheduled ship passenger service expensive, unprofitable, and therefore nonexistent. 46 App. U.S.C. §289 (2006). For Puerto Rico, see the section pertaining to the transportation of passengers between Puerto Rico and other United States ports; foreign-flag vessels; unavailability of United States flag service. 46 App. U.S.C. § 289c (2006). This section authorizes passenger service between the contiguous U.S. and Puerto Rico under certain conditions. This allows cruise ship services to stop in Puerto Rico when traveling directly between U.S. territories. *Id.* But this does not constitute common carrier water passenger service between the contiguous U.S. and Puerto Rico. *Id.* Hence, leisure cruise ships do not provide service between non-contiguous parts of the U.S., since their business purpose and schedule are not intended for point-to-point passenger and freight transportation. *Id.*

115. 49 U.S.C. § 40101 (2006).

116. *Id*.

117. *Id.* at § 40101(a)(4).

118. *See id.* at § 40101, § 40103.

119. Beckman v. Saratoga & Schenectady R.R., Co., 3 Paige Ch. 45, 75 (N.Y. 1831).

120. Some cities within Alaska, for instance, the capital Junea, are only accessible by air or sea, air being the only timely mode. Intrastate travel in some states is more convenient by air for travel between cities within a state separated by great distances and/or natural barriers, e.g., California, Florida, Illinois, New York, and Texas.

be the only practical means of transportation;" when limited, it often deprives an individual of the right to travel.[121] Even if other modes of travel exist, the Second Circuit held in *United States v. Albarado,* it is not acceptable to force travelers to forego using air travel because "it would work a considerable hardship on many air travelers to be forced to utilize an alternate form of transportation, assuming one exists at all."[122] More recently, in *Mohamed v. Holder*, the district court held that:

> The impact on a citizen who cannot use a commercial aircraft is profound. He is restricted in his practical ability to travel substantial distances within a short period of time, and the inability to fly to a significant extent defines the geographical area in which he may live his life. . . . An inability to travel by air also restricts one's ability to associate more generally, and effectively limits educational, employment and professional opportunities. It is difficult to think of many job[s] . . . where an inability to fly would not affect the prospects for employment or advancement. . . . An inability to fly likewise affects the possibility of recreational and religious travel . . . particularly those who are employed.[123]

In short, courts recognize the unique nature of flight as a necessarily accessible and protected mode of transportation under the travel right and federal law.

Passenger travel by airline common carriage also constitutes the only mode for covering large distances in a timely manner within the continental United States. People today do not have the luxury to journey for days across widely disbursed coastal areas within the United States from California to Maine. Citizens have responsibilities, and time is valuable. Jobs do not allow people to spend a great amount of time traveling.[124] Exercising constitutional rights requires timely access to travel great distances for citizens to petition the national government and exercise political liberties.[125]

---

121. United States v. Kroll, 481 F.2d 884, 886 (8th Cir. 1973).

122. United States v. Alvarado, 495 F.2d 799, 806 (2d Cir. 1974). However, in *Town of Southold v. Town of East Hampton*, the Second Circuit stated that travelers do not have "a constitutional right to the most convenient way of travel" and that minor restrictions do not abridge the right to travel. 477 F.3d 38, 54 (2d Cir. 2007) (referencing City of Houston v. F.A.A., 679 F.2d 1184, 1198 (5th Cir.1982)). This decision conflicts with *Kroll* and *Alvarado*, and with the right of citizens to enjoy the benefits and access to all public transportation modes. *Alvarado*, 495 F.2d at 806.

123. Mohamed v. Holder, 2014 WL 243115, at *6 (E.D.Va. Jan. 22, 2014).

124. Air travel has allowed for Congress to remain in session more days throughout the year and for members to return home for every recess and even weekly. CAL JILLSON, AMERICAN GOVERNMENT: POLITICAL DEVELOPMENT AND INSTITUTIONAL CHANGE 234 (2009).

125. An individual needing to reach the seat of the federal government in Washington, D.C. or of the state government in Juneau to petition the government for redress of

Traveling long distances within the contiguous United States relies on only one mode of travel: commercial airlines. Therefore, restricting this single mode of travel, by air, abridges the right to travel and the right to exercise political and personal liberties. The single mode construction thus contravenes the right to travel within the U.S. territory.[126] By threatening to prevent the use of what is often the only viable method of transportation—airline travel—and by imposing corollary chilling effects on citizens' right to seek redress from government, the "single mode doctrine" abridges the right to interstate travel and freedoms of expression and assembly. In doing so, it undermines the right to travel that is broadly non-discriminatory. The "single mode doctrine" fails historically and constitutionally. If any single mode is limited, the right to travel is abridged. Instead, the travel right is a multi-modal one that encompasses all forms of transport.

III. ABRIDGING THE RIGHT TO TRAVEL

As *Shapiro* articulated, the right to travel is a "fundamental right" guaranteed by the Constitution.[127] "An individual's liberty may be harmed by an act that causes or reasonably threatens a loss of physical locomotion or bodily control."[128] As *Guest* found, the right is "virtually unqualified."[129]

Especially in the surveillance age after 9/11, federal impediments to domestic travel particularly by air have undermined and abridged the rights of millions of passengers.[130] The major limitations on travel rights consist in identification and informational requirements, as well as intrusive physical screening. On the one hand, these limitations involve official air identification requirements in order to fly, watchlists and "no-fly" designations, and passenger pre-screening schemes to get a reservation. On the other hand, they involve whole body scanning and

---

grievances, as guaranteed by the First Amendment, may require air traveling as the only available mode to reach the government.

126. The "single mode doctrine" also conflicts with federal law requiring that modes of transportation be accessible. The federal government mandates that most public buildings, including airports and train stations, be accessible to people with disabilities. *See* 49 U.S.C. § 40101 (2006) (addressing handicap accessibility); *id.* at § 41705 (addressing discrimination laws); *see also id.* at § 4151-57. Similarly, federal law ensures that citizens living in remote areas are entitled to subsidized scheduled air service. A regular, subsidized minimum air service is maintained to many small communities in the United States. *See State of New Mexico v. Phillip Mocek*, *supra* note 110.

127. Shapiro v. Thompson, 394 U.S. 618, 630-31 (1969) (overruled parts unrelated to the right to travel by *Edema v. Jordan*); *see generally* Edema v. Jordan, 415 U.S. 651 (1974).

128. ELIZABETH P. FOLEY, LIBERTY FOR ALL: RECLAIMING INDIVIDUAL PRIVACY IN A NEW ERA OF PUBLIC MORALITY 49 (2006).

129. United States v. Guest, 383 U.S. 745, 757 (1966).

130. Sobel & Torres, *supra* note 112.

"enhanced" pat down searches. Each burdens citizens' rights to travel and to privacy. They abrogate citizens' rights without materially improving security procedures.[131] Since 1996, air passengers have faced the requirement to provide official identification in order to board aircraft.[132] This essentially creates an internal passport requirement to fly in the United States, abridging the right to move freely around the nation.

Invasive scans and searches at the airports also violate the fundamental conception of the Fourth Amendment and the right to privacy.[133] These intrusions essentially function as mass searches without even the "protection" of the general warrants and writs that the Founding Fathers despised. During a trial challenging the use of writs of assistance in the pre-Revolutionary colonies, James Otis presciently "attacked the Writ of Assistance because its use placed the liberty of every man in the hands of every petty officer."[134] Quite simply, historically and today invasive general search schemes directly contradict the underpinning of the Fourth Amendment.

The intrusiveness of recent airport searches is currently sanctioned by another questionable doctrine of "administrative searches"[135] that further erodes Fourth Amendment protections.[136] Again, this administrative construction, like the "single mode doctrine's" undermining travel rights, degrades the fundamental Fourth Amendment protections by resurrecting the equivalent of governmental use of general warrants.[137]

Despite quoting John Adams as a signer of the Declaration of Independence, about the detriment of unreasonable searches without warrants, *Frank v. State of Maryland* in 1959 sanctioned non-criminal public safety searches that required no warrants.[138] This first major departure from the founding principles of the Fourth Amendment opened the door to further government intrusions. The Court held that a health

---

131. *See* Sobel & Torres, *The Right to Travel: Part III Unjustified Limitations on the Rights to Travel*, 80 J. OF TRANSP. L., LOGISTICS & POL'Y 13, 28 (2013).

132. *See* Sean Holstege, *Case Centers on Secret ID Directive*, INSIDE BAY AREA, Dec. 9 2005.

133. *See* United States v. Davis, 482 F.2d 893, 913 (9th Cir. 1973) (stating that the "election to submit to a search is essentially a 'consent' granting the government a license to do what it would otherwise be barred from doing by the Fourth Amendment").

134. Otis's argument so impressed his audience and the people of the Colonies that John Adams maintained that "American Independence was then and there born." Frank v. State of Md., 359 U.S. 360, 364 (1959).

135. Eva Primus, *Disentangling Administrative Searches*, 111 COLUMN. L. REV. 254, 262 (2011).

136. *See Frank*, 359 U.S. at 365; *compare e.g.*, FTC v. Am. Tobacco Co., 264 U.S. 298 (1924); Boyd v. United States, 116 U.S. 616 (1886); I.C.C. v. Brinson, 154 U.S. 447 (1894); Tropicana v. United States, 789 F. Supp. 1154 (Ct. Int'l Trade 1992).

137. *See Frank*, 359 U.S. at 364.

138. *Id.* at 366.

inspector may enter a home without a warrant to find a public health hazard.[139] The *Frank* holding began a series of expansions of invasion of privacy.[140]

Justice Douglas's dissent in *Frank* eloquently identifies the majority's mistake: the Fourth Amendment was not "designed to protect criminals only."[141] His dissent clarifies, "[t]he security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society."[142] Douglas also highlights the confusion that arises when administrative searches can lead to criminal penalties or are carried out by a police force: "This is a strange deletion to make from the Fourth Amendment. In some States the health inspectors are none other than the police themselves. In some States the presence of unsanitary conditions gives rise to criminal prosecutions."[143]

The place of privacy against unreasonable personal searches has been apparent for over a century in the Supreme Court jurisprudence since the *Boyd* decision in 1886.[144] While the majority in *Frank* explored the relation of the Fourth Amendment and the Fifth Amendment in criminal law, Justice Frankfurter mistook criminality as the key to whether a search is reasonable.[145] Earlier decisions like *Boyd,* which Frankfurter cites, did not require criminality for a search to necessitate a warrant.[146] Instead, *Boyd* states all "official acts and proceedings" are subject to the Fourth Amendment.[147] *Boyd* placed the primary importance on the object of the search as "a material ingredient, and [it] affects the sole object and purpose of search and seizure," whether the case involved a crime was merely dicta.[148] The dilution of the distinction in administrative search doctrine by requiring criminality has weakened the Fourth Amendment, just as Justice Douglas warned in *Frank*.[149]

The Fourth Amendment protection against unwarranted government searches "applies to governmental actions."[150] The amendment is "intended as a restraint upon the activities of sovereign authority."[151]

---

139. *Id.* at 373.
140. *See* Frank v. State of Md., 359 U.S. 360, 375 (1959).
141. *Id.* at 377 (Douglas, J., dissenting).
142. *Id.* at 375.
143. *Id.*
144. Boyd v. United States, 116 U.S. 616, 633 (1886); *see* Griswold v. Connecticut, 381 U.S. 479, 484 (1964).
145. Frank v. State of Md., 359 U.S. 360, 372 (1959).
146. *See generally* Boyd v. United States, 116 U.S. 616 (1886).
147. *Id.* at 624.
148. *Id.* at 622.
149. *Frank*, 359 U.S. at 373.
150. Bureau v. McDowell, 256 U.S. 465, 475 (1921).
151. *Id*.

Searches or seizures, like those at airports, are "ordinarily unreasonable in the absence of individualized suspicion of wrongdoing."[152]

The privacy rights inherent in the Constitution have eroded over time as the Supreme Court continues to undervalue privacy rights. Some courts find exceptions to the Fourth Amendment based on administrative convenience or alleged necessity.[153] As Justice Scalia wrote in *Kyllo v. United States*, "[i]t would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology."[154]

The Fourth Amendment has now been further eroded by choices made by the Court. Technology advances in myriad ways, some privacy enhancing and some privacy inhibiting. When the Court insists on keeping the protections of the Fourth Amendment intact, technology more likely advances in a way that simultaneously retains full Fourth Amendment protections and meets the alleged requirements of convenience and necessity. Necessity as the mother of invention will lead technology to follow different and more privacy enhancing courses if the Court makes full protection of the Fourth Amendment a necessity for technological innovations.

Despite the protections embodied in the Fourth Amendment, courts have diluted the historical search and seizure doctrine over time.[155] Now, the government may often search persons to find evidence of a crime without a warrant, probable cause, or reasonable suspicion.[156] Thus, even when the potential criminality making a warrant necessary in *Frank* is present, the administrative search concept allows searching a person's body without probable cause or a judicial warrant.[157]

In fact, the privacy associated with a person's house should extend to one's body, since it is in essence more private than the home.[158] In 1924, the Court stated in *Federal Trade Commission v. Interstate Tobacco Company*:

---

152. City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000); *see also* William W. Greengage*, In Defense of the 'Per Se' rule: Justice Stewart's Struggle to Preserve the Fourth Amendment's Warrant Clause*, 31 AM. CRIM. L. REV. 4, 10-14 (1994).

153. "Airport screening searches . . . are constitutionally reasonable administrative searches because they are conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or explosives aboard aircraft, and thereby to prevent hijackings." United States v. Davis, 482 F.2d 893, 908 (9th Cir. 1973); *but see* Katz v. United States, 389 U.S. 347, 357 (1967).

154. Kyllo v. United States, 533 U.S. 27, 33-34 (2001); *but see* Sobel, Horwitz, & Jenkins, *supra* note 66.

155. Primus, *supra* note 135.

156. Elec. Privacy Info. Ctr. v. U.S. Dept. of Homeland Sec., 653 F.3d 1, 1 (D.C. Cir. 2011).

157. *Id.* at 10.

158. *See* Frank v. State of Md., 359 U.S. 360, 375 (1959).

> Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire, and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime.[159]

Wide-ranging searches into private papers and houses are anathema to liberty guaranteed by the Fourth Amendment. Expeditions into a person's body are even more repugnant to the Fourth Amendment's purposes as a cornerstone of liberty.[160] As the court stated in *McDonald v. United States*:

> The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals, nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted.[161]

The Supreme Court in *United States v. Lefkowitz* articulated the straightforward notion: "Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime."[162] In short, warrant requirements protect privacy. With each additional assault on the Fourth Amendment, Justice Douglas' prophetic dissent in *Frank* rings even truer now: "We live in an era 'when politically controlled officials have grown powerful through an ever increasing series of minor infractions of civil liberties.' One invasion of privacy by an official of government can be as oppressive as another."[163]

The efficacy of many technologies that intrude on the rights to travel and privacy are unproven. Instead, many air travel requirements and procedures represent what security expert Bruce Schneier has called "security theater."[164] They are mainly "measures that make people feel more secure without doing anything to actually improve their

---

159. FTC v. Am. Tobacco Co., 264 U.S. 298, 305-06 (1924) (citing I.C.C. v. Brinson, 154 U.S. 447, 479 (1894)).

160. York v. Story, 324 F.2d 450, 455 (9th Cir. 1963).

161. McDonald v. United States, 335 U.S. 451, 455-56 (1959).

162. United States v. Lefkowitz, 285 U.S. 452, 464 (1932).

163. *Frank*, 359 U.S. at 382 (1959) (citing *Health Inspection of Private Dwelling Without Search Warrant*, 17 U. CHI L. REV. 733, 740 (1950)).

164. Bruce Schneier, *Flying on Someone Else's Airplane Ticket*, SCHNEIER ON SECURITY (Feb. 8, 2005), *available at* http://www.schneier.com/blog/archives/2005/02/flying_on_someo_1.html.

security."[165] The key point is that each of these "requirements" and technologies infringes on the rights to travel and privacy. Yet, the burden in a free society is on the government when it pursues, for instance, security to find ways that preserve basic rights while addressing valid policy goals.

While the variety of assaults on the right to travel are the most obvious today in air travel, the intrusions are beginning to appear in other modes of transportation as the governmental agencies seek to extend their authority to other transportation modes and nodes.[166] These inaptly expand the scope of abridgement of the right to travel: what happens at the airport checkpoint can extend to the subway turnstile.[167]

CONCLUSION: TOWARD A ROBUST RIGHT TO TRAVEL

As a fundamental political liberty since the Magna Carta, Blackstone's *Commentaries*, and the Articles of Confederation, the right to travel is essential for individual freedom and national unity. Its interstate manifestation has been broadly based in the privileges and immunities since the Articles of Confederation and the U.S. Constitution and encompasses all modes of travel across the federal union.

The travel right encompasses personal, political, and commercial movement fundamental to the nature of the United States by effectively stitching the union together. The right to travel guarantees the free movement of people and goods throughout the nation. It allows citizens to exercise other fundamental rights guaranteed by the Constitution and the Bill of Rights, like petitioning for redress of grievances and

---

165. None of the 911 hijackers who used their real names were identified beforehand. The would-be terrorist traveling on Christmas 2009 under his own name hid powdered explosive compound, PETN, in his clothing, despite both the physical and watchlist layers of security. The failure of the security procedures to prevent him from trying to ignite the explosive, exemplifies the failings of the system. Investigators concluded body-scanning devices would likely have not detected the compound. *Id.*; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-385, AVIATION SECURITY: COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM FACES SIGNIFICANT IMPLEMENTATION CHALLENGES (2004).

166. Aviation and Transportation Security Act, Pub. L. No. 107-71, § 115 Stat. 579 (2001) (assigning responsibility to TSA for security in all modes of transportation). TSA could expand pre-screening like Secure Flight to trains, subways and buses, create similar "no-travel lists," and implement them on all possible modes of interstate travel, including Amtrak. This could abridge the right to travel by every single transportation mode. *See* Thom Patterson, *TSA Rail, Subway Spot-Checks Raise Privacy Issues*, CNN (Jan. 28, 2012); Jen Quraishi, *Surprise! TSA Is Searching Your Car, Subway, Ferry, Bus, AND Plane*, MOTHER JONES (June 20, 2011), http://www.motherjones.com/mojo/2011/06tsa-swarms-800-bus-stations-public-transit-systems-yearly; see also Gilmore v. Gonzales, 435 F.3d 1125 (9th Cir. 2006) (discussing the prospects of IDs on other modes of travel).

167. For a more detailed discussion of the conflict between the right to travel, air identification, Secure Flight, and Whole Body Scanning system, *see* Sobel & Torres, *supra* note 112.

protecting privacy. In short, the right to travel freely implies respect for other liberties and rights.

The federal government's extensive national jurisdiction provides American citizens with constitutional protection for traveling domestically on common carriers. The "single mode doctrine" fails for its inconsistencies with the potent original historical and political underpinnings of travel rights. It also fails for its undue burdens on long distance travel, especially from the non-continental United States, but also within the contiguous U.S. territory, necessary here to live and carry out economic and political activities.

The impositions of burdens and regulations, like government identification requirements, passenger watch-list matching and prescreening programs, undermine the nature and exercise of the travel right, what it means to be an American citizen, and personal privacy. These abridgments transform travel from a foundational right into a privilege requiring governmental permission. They form the basis for a domestic passport system that undermines the right to travel and other fundamental freedoms.

The travel right is multi-modal and encompasses all methods of transportation. Contrary to the inaptly constructed "single mode doctrine," if any mode of transportation is restricted, then the constitutionally enshrined right of travel is abridged. Moreover, the lawful and beneficial relationship between the government and those governed by their consent is inverted by requirements for government ID and permission to travel. In the post-9/11 era, overreaching government agencies have assaulted the foundational travel and privacy rights by replacing "consent of the governed" with "permission from the government."

Contrary to certain circuit courts' truncation of the broad scope and strength of the travel right, a plenary right to travel, enshrined in the Constitution strengthens both liberty of the individual citizen and the very nature of a more perfect union. The Supreme Court of these United States needs to correct the misplotted course in some appellate opinions by rearticulating a plenary, original, and multi-modal constitutional right to travel.