

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2006

(Argued September 11, 2006 Decided August 14, 2007)

Docket No. 06-0104-cv

Judith Karpova,

Plaintiff-Appellant,

v.

John Snow, Secretary, Department of the Treasury,
United States of America,

Defendants-Appellees.

Before:

CARDAMONE, SOTOMAYOR, and KATZMANN,
Circuit Judges.

Plaintiff Judith Karpova appeals from the judgment entered October 31, 2005 in the United States District Court for the Southern District of New York (McMahon, J.) dismissing her complaint. Karpova alleged the Department of Treasury's Office of Foreign Assets Control had violated her constitutional rights and acted in an arbitrary and capricious manner in violation of the Administrative Procedure Act when it fined her for traveling to Iraq in violation of the Iraqi Sanctions Regulations.

Affirmed.

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New York, for Plaintiff-Appellant.

ROSS E. MORRISON, Assistant United States Attorney, New York, New
York (Michael J. Garcia, United States Attorney, Sara L.
Shudofsky, Assistant United States Attorney, Southern
District of New York, New York, New York, of counsel), for
Defendants-Appellees.

1 CARDAMONE, Circuit Judge:

2 Plaintiff Judith Karpova (plaintiff or appellant), a
3 resident of New York State and an American citizen, traveled to
4 Iraq in 2003. Purporting to belong to a group known as the
5 Truth, Justice, and Peace Human Shield Action Project (Project),
6 whose aim was to deter the bombing of civilian infrastructure
7 facilities by acting as human shields at such sites in that
8 country, plaintiff claims she went to Iraq in three capacities:
9 as an ordained minister to bear witness to the effect on Iraq's
10 people of economic sanctions, as a professional writer and
11 journalist sending letters or reports to the Jersey Journal, a
12 daily newspaper in Jersey City, New Jersey, and as a human shield
13 to prevent destruction of civilian infrastructure in the event of
14 renewed hostilities. Unfortunately, in doing this and despite
15 her good intentions, plaintiff transgressed several executive
16 orders and United States Treasury Department regulations that
17 governed what interactions United States citizens could have with
18 Iraq while economic sanctions were in place.

19 Because plaintiff violated those orders and regulations, the
20 Office of Foreign Assets Control within the United States
21 Department of the Treasury (Foreign Assets Control Office or
22 Agency) assessed against her a civil monetary penalty of \$6,700.
23 To set aside this fine, plaintiff brought suit against the
24 government in the United States District Court for the Southern
25 District of New York (McMahon, J.). In her complaint plaintiff
26 alleged that her First and Fifth Amendment rights were violated

1 and that the government had engaged in final agency action
2 against her in an unlawful manner. Judge McMahon granted summary
3 judgment in favor of the government, dismissing plaintiff's
4 complaint in a judgment entered October 31, 2005. From that
5 judgment Karpova appeals.

6 BACKGROUND

7 A. Statutory and Regulatory Background

8 In 1990 Congress passed the Iraqi Sanctions Act, which among
9 other things, directed the President to "continue to impose the
10 trade embargo and other economic sanctions with respect to Iraq."
11 Pub. L. No. 101-513, § 586C(a), 104 Stat. 1979, 2048 (1990).
12 President Bush issued executive orders premised on the notion
13 that Iraqi government policies constituted an unusual and
14 extraordinary threat to the national security of the United
15 States, directing that economic sanctions be imposed on Iraq and
16 authorizing the Secretary of the Treasury to promulgate
17 regulations implementing prohibitions on, among other things, the
18 exportation of services to Iraq and transactions related to
19 travel to Iraq. Exec. Order No. 12,722, 55 Fed. Reg. 31,803
20 (Aug. 2, 1990); Exec. Order No. 12,724, 55 Fed. Reg. 33,089 (Aug.
21 9, 1990). On January 18, 1991 the Foreign Assets Control Office
22 of the United States Treasury Department issued the Iraqi
23 Sanctions Regulations (regulations) implementing the prohibitions
24 outlined in the President's executive orders and outlining
25 procedures for dealing with violations. See 31 C.F.R.
26 §§ 575.204-211, 575.702-704.

1 Under these regulations, the Foreign Assets Control Office
2 may demand that people engaging in transactions related to Iraq
3 provide it with complete information relative to those
4 transactions. See 31 C.F.R. § 501.602. When the Agency has a
5 reasonable belief that a violation of the regulations has
6 occurred, it issues a Prepenalty Notice. 31 C.F.R. § 575.702.
7 The Prepenalty Notice informs the alleged violator that a
8 monetary penalty will be imposed unless he or she responds in
9 writing explaining why a penalty is inappropriate. Id. If the
10 recipient replies in such a manner, the Director of the Foreign
11 Assets Control Office then makes a final determination as to
12 whether a violation has occurred and, if so, what financial
13 penalty should be imposed. Such final determination is set forth
14 in a Penalty Notice. 31 C.F.R. § 575.704.

15 B. Karpova Travels to Iraq

16 In early 2003 the Project hoped to bring attention to the
17 fact that the United States allegedly had bombed civilian
18 infrastructure in Iraq during the 1990 Gulf War. The method the
19 Project chose to get public attention was to send non-Iraqis to
20 these sites to act as human shields. The presence of civilians
21 at the sites, it was hoped, would publicize the threat to them
22 were the United States to begin a bombing campaign, and perhaps
23 deter the United States from acting. Plaintiff Karpova joined
24 this group and sent a letter to supporters indicating her plans
25 to travel to Iraq in February 2003 as a member of the Project.
26 She requested supporters to send small donations to help finance

1 her travel expenses. On February 19, 2003 she arrived in Iraq
2 and remained there until March 9. Karpova did not obtain a
3 license that might have authorized her, despite the economic
4 sanctions, to engage in travel-related transactions involving
5 Iraq. While there, plaintiff acted as a preemptive human shield.
6 Although Karpova left the country before the United States'
7 bombing campaign actually began, appellant was near an oil
8 refinery while in Iraq. Karpova also went on guided tours in
9 Basra and Baghdad, visited hospitals and schools, and spent time
10 "looking, listening, talking, and writing." Her writing took the
11 form of four letters sent back to America that were printed in
12 installments by the Jersey Journal. The Foreign Assets Control
13 Office learned of Karpova's unauthorized trip from press
14 accounts.

15 C. Agency's Response

16 On March 20, 2003 the Foreign Assets Control Office sent a
17 letter to plaintiff requiring that she provide the Department of
18 the Treasury with a detailed written report concerning her trip
19 to Iraq, so that it could ascertain whether she had violated the
20 Iraqi Sanctions Regulations. This "Requirement to Furnish
21 Information" specifically required Karpova to provide the dates
22 of her travel to Iraq, reason for her trip, and a detailed
23 itemization of all travel-related transactions in which she
24 engaged in connection with her trip. Plaintiff responded on
25 April 21, 2003 with a lengthy letter, which included the dates
26 and various reasons for her trip, but failed to provide a

1 detailed itemization of all travel-related transactions.
2 Instead, she simply asserted that all of her travel-related
3 transactions were taken care of by an organization called the
4 Peace, Friendship, and Solidarity Organization, and thus that she
5 was not required to spend any money during her 19 days in Iraq.

6 Plaintiff did not provide any proof to support her
7 statements despite the Agency's request that she provide a copy
8 of any travel-related receipts or records associated with her
9 expenditures in Iraq. The Agency replied on June 23, 2004 by
10 sending Karpova a Prepenalty Notice stating she had violated the
11 Iraqi Sanctions Regulations by exporting her services to Iraq and
12 engaging in unauthorized travel-related transactions while there.
13 The Prepenalty Notice cited the following specific violations:
14 (1) attempting to collect funds for travel expenses to/from/
15 within Iraq, (2) departing Jordan for Iraq and arriving in Iraq,
16 (3) providing ministerial services, (4) serving as a freelance
17 journalist, (5) providing services to the government of Iraq by
18 shielding Iraqi government infrastructure from possible United
19 States military action, and (6) engaging in travel-related
20 transactions, including the purchase of food. The Prepenalty
21 Notice proposed a penalty of \$10,000, and it gave Karpova an
22 opportunity to submit a written response. The Prepenalty Notice
23 requested that Karpova explain why the penalty should not be
24 issued or why, if issued, it should be reduced.

25 Karpova answered this request on August 5, 2004 with a
26 letter from her lawyer arguing that she had not provided services

1 to any agency of the Iraqi government. The letter contended that
2 the regulatory scheme under the Iraqi Sanctions Regulations
3 violated Karpova's due process rights and exceeded the authority
4 of the Executive branch, and that the penalty violated Karpova's
5 First and Fifth Amendment rights. She did not dispute that she
6 had engaged in transactions related to travel in Iraq, but she
7 incorporated by reference her previous letter as something for
8 the Foreign Assets Control Office to consider in determining the
9 appropriate penalty.

10 On March 14, 2005 the Agency sent Karpova a Penalty Notice.
11 The Penalty Notice ruled that she had violated the Iraqi
12 Sanctions Regulations by engaging in prohibited transactions
13 relating to Iraq, as detailed in the Prepenalty Notice. It
14 explained that Karpova's response had not presented any new facts
15 or explanations to refute the Foreign Assets Control Office's
16 charges that Karpova violated the regulations. The fine was
17 reduced from \$10,000 to \$6,700 in light of the fact that
18 plaintiff had provided a written response to the Prepenalty
19 Notice and because it was her first offense.

20 D. The Instant Suit

21 On June 9, 2005 plaintiff brought the instant suit alleging
22 that the fine imposed against her for her travel to Iraq was
23 arbitrary and capricious in violation of the Administrative
24 Procedure Act and unconstitutional under the First and Fifth
25 Amendments. She also claimed the Iraqi Sanctions Regulations
26 were themselves unlawful. Karpova requested the district court

1 declare the Penalty Notice and 31 C.F.R. § 575.207 (prohibited
2 transactions relating to Iraq) null and void and sought a
3 permanent injunction preventing the United States from blocking
4 or restricting her First and Fifth Amendment rights. On October
5 25, 2005 the district court granted summary judgment in favor of
6 the government and dismissed Karpova's complaint in its entirety.
7 This appeal followed.

8 DISCUSSION

9 I Administrative Procedure Act Claims

10 On appeal from a grant of summary judgment involving a claim
11 brought under the Administrative Procedure Act, we review the
12 administrative record de novo without according deference to the
13 decision of the district court. Supreme Oil Co. v. Metro.
14 Transp. Auth., 157 F.3d 148, 151 (2d Cir. 1998) (per curiam).
15 Under 5 U.S.C. § 706(2) (A) a reviewing court must hold unlawful
16 and set aside any agency action found to be arbitrary,
17 capricious, an abuse of discretion, or otherwise not in
18 accordance with law. However, "[t]he scope of review under the
19 'arbitrary and capricious' standard is narrow," and courts should
20 not substitute their judgment for that of the agency. Motor
21 Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.
22 Co., 463 U.S. 29, 43 (1983). Instead, an agency determination
23 will only be overturned when the agency

24 has relied on factors which Congress has not
25 intended it to consider, entirely failed to
26 consider an important aspect of the problem,
27 offered an explanation for its decision that
28 runs counter to the evidence before the

1 agency, or is so implausible that it could
2 not be ascribed to a difference in view or
3 the product of agency expertise.
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5 Id. In other words, so long as the agency examines the relevant
6 data and has set out a satisfactory explanation including a
7 rational connection between the facts found and the choice made,
8 a reviewing court will uphold the agency action, even a decision
9 that is not perfectly clear, provided the agency's path to its
10 conclusion may reasonably be discerned. Id.

11 The Penalty Notice was far from clear. It did not
12 explicitly set forth the basis for its determination that Karpova
13 violated the Iraqi Sanctions Regulations. Instead, it referenced
14 the fact that the Prepenalty Notice had accused her of engaging
15 in certain prohibited transactions relating to Iraq and found
16 that such transactions violated the regulations. The Prepenalty
17 Notice had listed a number of different violations of the
18 regulations assertedly committed by Karpova and accused appellant
19 of "exportation of services to Iraq" in violation of 31 C.F.R.
20 § 575.205 and of "unauthorized travel-related transactions in
21 Iraq" in violation of 31 C.F.R. § 575.207.

22 Specifically, the Prepenalty Notice had accused her of the
23 six acts outlined a moment ago and had cited the applicable
24 regulations. But strikingly, in the first paragraph of the
25 Penalty Notice, where the charge against Karpova and the Agency's
26 ruling are listed, there is no mention of plaintiff providing
27 services to Iraq. Instead, the Penalty Notice just cited the
28 accusation that Karpova had engaged in the transactions detailed

1 in the Prepenalty Notice and ruled that "such transactions
2 violated the Iraqi Sanctions Regulations" (emphasis added). As a
3 consequence, in determining whether the regulations were applied
4 in an arbitrary and capricious manner, we look at whether the
5 transactions listed in the Prepenalty Notice were sufficient to
6 support the Agency's determination that Karpova violated
7 § 575.207 by "engag[ing] in any transaction relating to travel by
8 any U.S. citizen . . . to Iraq."

9 We turn first to the specific allegations against appellant.
10 The three transactions Karpova was accused of were: (1)
11 attempting to collect funds for travel expenses to/from/within
12 Iraq, (2) departing Jordan for Iraq and arriving in Iraq, and (6)
13 purchasing food while in Iraq. It was not arbitrary and
14 capricious for the Foreign Assets Control Office to determine
15 that Karpova had engaged in these three transactions. Karpova's
16 own letter indicated that she solicited small donations to help
17 finance her travel expenses to Iraq. The regulations do not
18 define the term "transaction," but it was not unreasonable for
19 the Agency to decide that solicitation of funds constitutes a
20 transaction. Appellant admitted in addition in her letter
21 replying to the Prepenalty Notice that she traveled to Iraq
22 during the winter of 2003. Insofar as the purchase of food in
23 Iraq is concerned, appellant conceded in an article she submitted
24 to the Jersey Journal that although she was not paying for living
25 expenses during her first week in Iraq, she expected her group
26 would start paying its way once they got organized. Plaintiff

1 subsequently maintained she was not required to spend any money
2 in Iraq, but she did not adduce any proof to support that
3 assertion despite the demand that she provide a detailed
4 itemization of all travel-related transactions backed by
5 pertinent records. Given the foregoing, it was not arbitrary and
6 capricious for the Agency to rule Karpova had engaged in
7 transactions relating to travel in Iraq in violation of the
8 regulations. Thus, the Agency's action may not be faulted under
9 the Administrative Procedure Act.

10 We note next that the Penalty Notice also mentioned that
11 appellant had provided a service to the government of Iraq by
12 shielding the oil refinery from possible United States military
13 action. This indicates that perhaps Karpova was fined not only
14 for the transactions she engaged in, but also for the services
15 she provided. Further, the Prepenalty Notice could be read to
16 imply that Karpova was punished for engaging in another type of
17 service as well -- serving as a freelance journalist. If so,
18 then the Agency's determination was flawed. There is no
19 indication in the record that she sought to render this service
20 to the Iraqi government, and so the Agency would have acted
21 arbitrarily and capriciously had it punished her for this
22 activity. However, we need not determine the exact contours of
23 the conduct for which appellant was fined, since the Foreign
24 Assets Control Office could have fined her \$6,700 for committing
25 any one of the six alleged acts. See 31 C.F.R. § 575.701. Thus,
26 it is unnecessary to consider whether the services provided by

1 appellant to Iraq could have served as an alternative basis for
2 this penalty.

3 Even if we were to conclude the Agency alternatively based
4 the fine on one or more of the alleged services provided by
5 Karpova, and find such alternative grounds were flawed, remand is
6 not required here. We are confident that the Agency would reach
7 the same conclusion absent any such error. See, e.g., NLRB v.
8 Wyman-Gordon Co., 394 U.S. 759, 766 n.6 (1969) (not requiring
9 remand where it serves as an "idle and useless formality"); NLRB
10 v. Am. Geri-Care, Inc., 697 F.2d 56, 64 (2d Cir. 1982) (stating
11 that remand is required "only where there is a significant chance
12 that but for the error, the agency might have reached a different
13 result").

14 Similarly, even if plaintiff is correct that some of the
15 transactions she engaged in in Iraq related to journalistic
16 activities and thus were exempted from sanction by § 575.207,
17 remand on that basis would be futile. By way of background,
18 § 575.207 provides that transactions "[r]elating to journalistic
19 activity by persons regularly employed in such capacity by a
20 newsgathering organization" are not sanctionable, and
21 § 575.416(b) (1) clarifies that certain freelance journalists are
22 covered by § 575.207's exemption. Karpova's argument is that her
23 solicitation of funds, her travel to Iraq, and her purchase of
24 food all related to her freelance journalistic activity, and thus
25 were not sanctionable under the regulations. Unfortunately, the
26 Agency did not provide much explanation on this issue; it merely

1 noted in the Prepenalty Notice that Karpova acted as a freelance
2 journalist while in Iraq, but failed to address in its final
3 decision whether she qualified as a journalist under § 575.416
4 and whether these transactions were covered by this exception.
5 Yet, plaintiff overlooks § 575.416(c), which notes that
6 "[a]uthorized travel transactions are limited to those incident
7 to travel for the purpose of collecting and disseminating
8 information for a recognized newsgathering organization, and do
9 not include travel transactions related to any other activity in
10 Iraq" (emphasis added). Karpova admits that among her activities
11 within Iraq were excursions to "defend Iraqi civilian
12 infrastructure from bombing." Such activity clearly would not
13 fall within the journalistic exception, and thus we are confident
14 the Agency would reach the same conclusion even were we to
15 determine that some of Karpova's activities in Iraq were exempted
16 by the journalistic exception.

17 Appellant finally declares that the regulations themselves
18 exceeded the authority Congress gave to the President to limit
19 economic contact with Iraq. This argument may be swiftly
20 rejected. The regulations were promulgated to implement
21 executive orders which were issued under the authority granted to
22 the President by both the International Emergency Economic Powers
23 Act, 50 U.S.C. § 1701 et seq. and the United Nations
24 Participation Act (UNPA), 22 U.S.C. § 287 et seq. See Exec.
25 Order No. 12,722, 55 Fed. Reg. 31,803 (Aug. 2, 1990); Exec. Order
26 No. 12,724, 55 Fed. Reg. 33,089 (Aug. 9, 1990); see also Sacks v.

1 Office of Foreign Assets Control, 466 F.3d 764, 775-77 (9th Cir.
2 2006); Office of Foreign Assets Control v. Voices in Wilderness,
3 329 F. Supp. 2d 71, 78 (D.D.C. 2004) (finding authority solely
4 under the UNPA). In addition, the Iraqi Sanctions Act of 1990
5 directed the President to "continue to impose the trade embargo
6 and other economic sanctions with respect to Iraq and Kuwait that
7 the United States is imposing . . . pursuant to Executive Order[]
8 Numbered 12724 . . . , and, to the extent [it is] still in
9 effect, Executive Order[] Numbered 12722" Pub. L. No.
10 101-513, § 586C(a), 104 Stat. 1979, 2048 (1990). To the extent
11 that appellant asserts that there was not a "legal predicate for
12 imposition and extension of the economic sanctions" because there
13 had been no finding that the Iraqi regime posed "an urgent threat
14 to the security of the United States in 2003[]," we note that in
15 deciding to impose sanctions the President was acting in the area
16 of foreign policy pursuant to congressional authorization. We
17 review with great deference such executive branch determinations.
18 Palestine Info. Office v. Schultz, 853 F.2d 932, 937 (D.C. Cir.
19 1988). We decline to second-guess the President's determination
20 that the Iraqi regime posed an urgent threat to the United States
21 such that he could punish those who violated the economic and
22 travel restrictions pursuant to the regulations. The district
23 court's dismissal of plaintiff's challenge to the authority for
24 the regulations should be affirmed.

1 II Procedural Due Process Claim

2 The district court granted the government summary judgment
3 with respect to Karpova's due process claim. We review that
4 grant de novo, construing the facts in the light most favorable
5 to Karpova. See Tocker v. Philip Morris Cos., 470 F.3d 481, 486
6 (2d Cir. 2006). Summary judgment is only appropriate when there
7 is no genuine issue as to any material fact, making judgment
8 appropriate as a matter of law. Id. at 486-87.

9 A. Opportunity to be Heard

10 Under the Fifth Amendment's Due Process Clause no person may
11 be deprived of life, liberty, or property without reasonable
12 notice and an opportunity to be heard. See Mullane v. Cent.
13 Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). The
14 opportunity to be heard must be "at a meaningful time and in a
15 meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333
16 (1976). However, the Due Process Clause does not necessarily
17 require that a person be given an opportunity to be heard orally
18 in a testimonial setting; the opportunity for written submissions
19 may be sufficient. See Interboro Inst., Inc. v. Foley, 985 F.2d
20 90, 93 (2d Cir. 1993). The liberty interest and legal issues
21 involved determine the kind of hearing necessary. Id.
22 Therefore, in this context so long as those that are to decide
23 have before them claimant's legal arguments and do not act on a
24 one-sided or incomplete record, the Due Process Clause is
25 satisfied. Id.

1 There is no dispute that appellant was given notice before
2 she was fined. The key question is whether the opportunity she
3 was given to be heard was sufficient. The Agency's procedural
4 safeguards guaranteed that prior to fining Karpova, the Foreign
5 Assets Control Office informed her of its tentative assessment,
6 explained to her the basis for that assessment, provided her with
7 a summary of the evidence it considered relevant, and offered her
8 an opportunity to respond in a written presentation. See, e.g.,
9 Mathews, 424 U.S. at 346. The Agency considered the legal
10 arguments in Karpova's written submissions and issued a ruling
11 against her. Appellant has not identified in what way a
12 testimonial hearing would have benefitted her. Thus, there is no
13 genuine issue of material fact with regard to whether adequate
14 notice and an opportunity to be heard were provided to plaintiff.

15 B. Did the Foreign Assets Control Office Act as Both
16 Prosecutor and Judge?
17

18 We had a concern arising from appellant's arguments that due
19 process may have been violated in this case because the same
20 titled officer served as both prosecutor and judge in the
21 administrative proceedings. The Supreme Court has explained that
22 the combination of investigative and adjudicative functions in
23 the same individual does not necessarily create an
24 unconstitutional risk of bias so as to imperil the Due Process
25 Clause's requirement that trials be held before fair tribunals.
26 See Withrow v. Larkin, 421 U.S. 35, 46, 47, 57-58 (1975).
27 Instead, courts make case by case judgments based on the special

1 facts and circumstances of each particular situation in
2 determining whether the risk of unfairness is intolerably high.
3 Id. at 58. However, we have recognized that it presents a
4 troublesome question to determine when a single individual could
5 serve as both prosecutor and judge in the same case without
6 violating due process. MFS Sec. Corp. v. SEC, 380 F.3d 611, 618
7 (2d Cir. 2004). But here, when it is the same office -- rather
8 than the same person -- that performs multiple functions, due
9 process is not violated. Id. at 618-19.

10 Here, the Director of the Office of Foreign Assets Control
11 performed a prosecutorial function by sending Karpova the June
12 23, 2004 Prepenalty Notice that first notified plaintiff of the
13 specific charges against her. The Director of the same office
14 made the Agency's final ruling against Karpova in the March 14,
15 2005 Penalty Notice. However, the Director on June 23, 2004 was
16 R. Richard Newcomb, while the Director on March 14, 2005 was
17 Robert W. Werner. Since the same individual did not perform
18 adjudicative and non-adjudicative functions, there is no risk of
19 bias in the case at hand and thus no due process violation.

20 III Right to Travel and Free Speech Claims

21 A. Standard of Review

22 The trial court dismissed Karpova's First Amendment free
23 speech and Fifth Amendment right to travel claims under Federal
24 Rule of Civil Procedure 12(b)(6) for failure to state claims. We
25 review de novo a district court's decision to dismiss a complaint
26 pursuant to Rule 12(b)(6), accepting as true all factual

1 allegations contained in the complaint and drawing all inferences
2 in plaintiff's favor. Global Network Commc'ns, Inc. v. City of
3 New York, 458 F.3d 150, 154 (2d Cir. 2006).

4 B. Right to Travel Claim

5 Although the constitutional right to travel within the
6 United States is virtually unqualified, the right to travel
7 internationally is simply an aspect of the liberty protected by
8 the Due Process Clause of the Fifth Amendment, and as such may be
9 regulated within the bounds of due process. Califano v. Torres,
10 435 U.S. 1, 4 n.6 (1978) (per curiam). Therefore, this liberty
11 interest does not itself overcome the weighty foreign policy
12 concerns that may support travel restrictions. See Regan v.
13 Wald, 468 U.S. 222, 242 (1984). The President, in an executive
14 order implementing the economic sanctions authorized by Congress
15 in the Iraqi Sanctions Act of 1990, declared that the "policies
16 and actions of the Government of Iraq constitute an unusual and
17 extraordinary threat to the national security and foreign policy
18 of the United States," and therefore ordered that transactions by
19 United States citizens relating to travel to Iraq be prohibited.
20 Exec. Order No. 12,722, 55 Fed. Reg. 31,803 (Aug. 2, 1990).
21 Since the restriction on engaging in such transactions was based
22 on these concerns of foreign policy, the travel restriction was
23 not a violation of Karpova's liberty interests under the Fifth
24 Amendment's Due Process Clause.

1 C. Free Speech Claim

2 Under the First Amendment, a restriction against traveling
3 to a specified country is "an inhibition of action," not speech.
4 Zemel v. Rusk, 381 U.S. 1, 16 (1965). As the Zemel Court
5 explained, many restrictions on action could "be clothed by
6 ingenious argument in the garb of decreased data flow." Id. at
7 16-17. Yet such arguments are to no avail since the First
8 Amendment guarantees a citizen the right to speak and publish,
9 but does not guarantee an unrestrained right to gather
10 information. Id. at 17. Karpova was fined because of her
11 actions in violating the travel regulations, not for her speech.
12 Consequently, her First Amendment rights were not violated.

13 CONCLUSION

14 Accordingly, for the foregoing reasons, the grant of summary
15 judgment by the district court dismissing Karpova's complaint is
16 affirmed.