

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AYMAN LATIF; MOHAMED SHEIKH
ABDIRAHM KARIYE; RAYMOND
EARL KNAEBLE, IV; STEVEN
WILLIAM WASHBURN; NAGIB ALI
GHALEB; ABDULLATIF MUTHANNA;
FAISAL NABIN KASHEM; ELIAS
MUSTAFA MOHAMED; IBRAHEIM Y.
MASHAL; SALAH ALI AHMED;
AMIR MESHAL; STEPHEN DURGA
PERSAUD; and MASHAAL RANA,

3:10-cv-00750-BR

CASE-MANAGEMENT ORDER

Plaintiffs,

v.

ERIC H. HOLDER, JR., in his
official capacity as Attorney
General of the United States;
JAMES B. COMEY, in his official
capacity as Director of the
Federal Bureau of Investigation;
and CHRISTOPHER M. PIEHOTA, in
his official capacity as Director
of the FBI Terrorist Screening
Center,

Defendants.

BROWN, Judge.

Having weighed the competing case-management proposals set forth by the parties in their Joint Status Report (#167) and in the exercise of its discretion pursuant to Federal Rule of Civil Procedure 16, the Court enters this Order to schedule the next steps and further proceedings in this litigation.

The Court finds impractical Defendants' proposal to undertake dispositive-motion practice that simultaneously addresses Plaintiffs' ongoing objections to the constitutional sufficiency of the most-recent redress process that Defendants used to reconsider Plaintiffs' No-Fly List status and Plaintiffs' substantive due-process challenges to the merits of their continued inclusion on the No-Fly List. Until the Court resolves the six Plaintiffs' contentions that Defendants still have not provided a redress process compliant with the standards cited in the Court's June 24, 2014, Opinion and Order (#152), the Court concludes it would be inefficient and needlessly complicated to attempt to evaluate the merits-based, Plaintiff-specific result of each such process in the same dispositive motion.

Accordingly, this Case-Management Order anticipates a Plaintiff-specific, dispositive-motion schedule by which the parties first have a fair opportunity to litigate to resolution

the question whether each of the six objecting Plaintiffs has, in fact, received a redress process compliant with the standards cited in the Court's June 24, 2014, Opinion and Order.¹ If the motions establish Defendants' reconsideration process was constitutionally sufficient as to any Plaintiff's DHS TRIP inquiry, the next step will be to address the parties' disputes about the merits of Defendants' decision to continue to include that Plaintiff on the No-Fly List. If any Plaintiff, however, establishes Defendants' recent redress process still falls short of the standards cited in the Court's Opinion and Order, it may be necessary for the Court to require Defendants to provide yet another reconsideration for that Plaintiff before the Court can consider that Plaintiff's substantive claims. With six Plaintiffs objecting to the process and results and each deserving individualized consideration, the Court is unwilling to force a combined dispositive-motion process that is impractical and unnecessarily complicated.

¹ Plaintiffs incorrectly assert the Court must "adjudicate the specific process Plaintiffs are due" in the next round of motions. See Joint Status Report (#167) at 2. The Court continues to decline to require a particular process. Nonetheless, for each of the objecting Plaintiffs, the question remains whether Defendants' recent redress processes complied with the standards cited in the June 24, 2014, Opinion and Order.

Case-Management Order

1. In addition to cross-motions addressing the issues common to all Plaintiffs, the Court requires individualized, Plaintiff-specific motions and supporting materials. The Court also requires a Joint Statement of Agreed Facts as to the issues common to all Plaintiffs and separate Joint Statements of Agreed Facts as to each Plaintiff-specific motion.

The Court agrees Plaintiffs should be the initial moving parties for these cross-motions and that it is likely there will be legal arguments common to all Plaintiffs that can be efficiently addressed in a combined filing for all Plaintiffs. Accordingly, Plaintiffs must file a single, Combined Motion for Summary Judgment and a Memorandum in Support covering the legal arguments common to all Plaintiffs.

In addition, to the extent that there are Plaintiff-specific arguments concerning the adequacy of Defendants' new process as applied to that Plaintiff, the Court expects each such Plaintiff to make an individualized factual showing as to how that process was inadequate as applied. Accordingly, to ensure clarity of the record for each moving Plaintiff, the Court requires a separate, individualized Motion for Summary Judgment and Memorandum in Support by any Plaintiff who intends to rely on Plaintiff-specific, asserted inadequacies in the recent redress process.

Before the filing of any dispositive motion, however, and to minimize the need for any party to prove the undisputed nature of a factual matter involving the recent redress process for

purposes of Federal Rule of Civil Procedure Rule 56, the Court requires the parties to confer and to file a Joint Statement of Agreed Facts as to those facts common to all Plaintiffs and to file separate, Plaintiff-Specific Joint Statements of Agreed Facts applicable to those Plaintiffs who also intend to rely on specific, asserted inadequacies in their individual redress processes.

To the extent that any party asserts the Court should deem additional facts as undisputed for purposes of Rule 56, that party may make an evidentiary showing with the filing of that party's motion subject to the submission of opposing evidence in due course.

Having considered and adjusted the parties' proposed filing schedule to take into account additional filings that the parties may not have anticipated, the Court sets the following schedule:

- March 13, 2015:**
- 1) Joint Combined Statement of Agreed Facts Relevant to All Plaintiffs; and
 - 2) Separate Plaintiff-Specific Joint Statements of Agreed Facts.
- March 27, 2015:**
- 1) Plaintiffs' Combined Motion for Summary Judgment and Memorandum in Support (not to exceed 35 pages) as to those issues common to all Plaintiffs; and
 - 2) Each Plaintiff's separate Plaintiff-Specific Motions for Summary Judgment and Memoranda in Support (not to exceed 10 pages each).

- April 27, 2015:**
- 1) Defendants' Opposition to Plaintiffs' Combined Motion for Summary Judgment (not to exceed 35 pages);
 - 2) Defendants' separate Oppositions to each Plaintiff's separate Plaintiff-Specific Motions for Summary Judgment (not to exceed 10 pages each);
 - 3) Defendants' Combined Cross-Motion for Summary Judgment and Memorandum in Support (not to exceed 35 pages) as to the issues common to all Plaintiffs; and
 - 4) Defendants' separate Plaintiff-Specific Cross-Motions for Summary Judgment and Memoranda in Support (not to exceed 10 pages each).
- May 22, 2015:**
- 1) Plaintiffs' Reply Memorandum in Support of Plaintiffs' Combined Motion for Summary Judgment (not to exceed 35 pages);
 - 2) Each Plaintiff's separate Plaintiff-Specific Reply Memorandum in Support of that Plaintiff's separate Motion for Summary Judgment (not to exceed 7 pages each);
 - 3) Plaintiffs' Opposition to Defendants' Combined Cross-Motion for Summary Judgment (not to exceed 35 pages); and
 - 4) Each Plaintiff's separate Opposition to Defendants' separate Plaintiff-Specific Motions for Summary Judgment (not to exceed 10 pages each).
- June 15, 2015:**
- 1) Defendants' Reply Memorandum in Support of Defendants' Combined Cross-Motion for Summary Judgment (not to exceed 35 pages); and
 - 2) Defendants' separate Reply Memoranda in Support of Defendants' Plaintiff-Specific Cross-Motions for Summary Judgment (not to exceed 7 pages each).

The Clerk will contact counsel to schedule a status conference with the parties to occur between June 29, 2015, and July 3, 2015, so the Court may consider with counsel the extent to which oral argument may be necessary on issues raised in the parties' motions. The Clerk will also confer with counsel regarding a date in late July to reserve for any oral argument that may be needed.

2. To the extent that any party wishes to file a motion "under seal" or "ex parte," the Court requires the following process.

a. Concerns Regarding Plaintiffs' Privacy.

The Court notes Plaintiffs have expressed concerns about disclosure in these public-record motions of any facts that a Plaintiff may deem to be private. The Court encourages the parties to complete their conferral about their proposed Protective Order in light of existing precedent as to when a court may seal from public disclosure personal information about a litigant disclosed in Court proceedings. *See Foltz v. State Farm Mut. Automobile Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003). *See also In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 423-25 (9th Cir. 2011).

To the extent that the parties stipulate certain evidentiary material may be filed under seal, the parties must submit a joint motion and supporting authority seeking the Court's authorization to permit the filing of such a pleading under seal. Any

stipulated motion to file a pleading under seal must be made at least 7 calendar days before the due date for filing the pleading.

If the parties do not agree to stipulate after full conferral, the party seeking authority to file a pleading under seal must seek leave of Court by filing a motion with supporting authority. Any opposed motion to file a pleading under seal must be made after full conferral and at least 14 days before the due date for filing the pleading with any opposition due 7 days after the motion and at least 7 days before the due date for filing the pleading.

b. Defendants' Filings Under Seal or *Ex Parte* containing Sensitive National-Security Information.

If Defendants seek to make any filing under seal or *ex parte* as to sensitive, national-security information, they must follow this procedure:

(1) Defendants' counsel must confer with opposing counsel, and the conferral must be as complete as the law permits. Defendants must file a motion seeking leave to file the pleading under seal or *ex parte*. To the extent that the basis for an *ex parte* filing is itself privileged or exempt from disclosure in the public record, Defendants must, nevertheless, make a public, summary filing of the basis for the motion to seal or to file *ex parte* sufficient to allow Plaintiffs to file a

response to Defendants' contested request.

(2) For any contested motion to file a pleading under seal or *ex parte*, the motion and supporting authority are due at least 14 calendar days before the due date for filing the pleading, and any opposition is due at least 7 days before the due date for filing the pleading.

(3) Any stipulated motion to permit filing a pleading under seal or *ex parte* must be filed no later than 7 days before the due date for filing the pleading.

3. To the extent that any party wishes the Court to change this Case-Management Schedule in any respect, the Court requires the following process.

After full conferral among counsel, the parties may submit a single Joint Motion to Change Case-Management Schedule setting forth the proposed changes, the extent to which the parties agree or oppose the changes, and the bases for the proposed changes. The Court will consider any such Joint Motion expeditiously and notify the parties whether a hearing will be held or whether the Court will rule on the record.

4. No later than March 13, 2015, the parties must submit a proposed form of a dispositive order as to the claims of Plaintiffs who are not presently on the No-Fly List.

For clarity of the record, the Court requires the entry of a dispositive order confirming the conclusion of all claims by Plaintiffs who are not presently on the No-Fly List. The Court directs the parties to confer about the form of such an order and

to make a single joint filing **no later than March 13, 2015**, setting forth the agreed and any disputed proposed provisions of such an order together with a concise statement of the bases for any disputed provisions.

IT IS SO ORDERED.

DATED this 13th day of February, 2015.



ANNA J. BROWN
United States District Judge