

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AYMAN LATIF, et al., <i>Plaintiffs,</i> v. LORETTA E. LYNCH, et al., <i>Defendants.</i>	Case 3:10-cv-00750-BR JOINT STIPULATIONS REGARDING JURISDICTION
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For purposes of the Court's consideration of its jurisdiction to consider Plaintiffs' substantive claims, the parties hereby stipulate to the following:

Process in general:

1. The Terrorist Screening Center (TSC) maintains the government's consolidated and integrated terrorist watchlist, known as the Terrorist Screening Database (TSDB), of which the No Fly List is a subset.
2. TSA implements the No Fly List by directing aircraft operators to deny individuals on the List boarding on aircraft flying to, from, or over the United States.
3. The Department of Homeland Security Traveler Redress Inquiry Program (DHS TRIP) provides a single point of contact for complaints and inquiries regarding travel difficulties, including situations in which:
 - a. travelers believe their travel difficulties may be the result of a watchlist misidentification;
 - b. travelers have been denied entry at a port of entry;

- c. travelers believe they have been unfairly or incorrectly delayed, denied airline boarding, or identified for additional screening or inspection at transportation hubs as a result of being incorrectly placed on a watchlist.
4. A traveler who experiences difficulties may submit a Traveler Inquiry Form to DHS TRIP. Upon receipt of a Traveler Inquiry Form, DHS TRIP reviews the information submitted by the traveler and evaluates each inquiry to determine with which DHS components or other governmental agencies it must coordinate to address the issues underlying the claimed travel difficulties.
5. In the cases in which DHS TRIP determines that a traveler is an exact or possible match to an identity in the TSDB, DHS TRIP refers the matter to the TSC.
6. When a traveler's redress inquiry is referred to the TSC, the TSC reviews the traveler's record in consultation with the agency or agencies that control the relevant information. Upon the conclusion of that review, the TSC notifies DHS TRIP of the outcome of the review.
7. Once all relevant agencies have reviewed a traveler's redress inquiry and record and reached a determination regarding the traveler's appropriate status with respect to the TSDB and any other travel issue that was identified by the traveler, DHS TRIP issues a determination letter to the traveler. Throughout this administrative process, DHS TRIP maintains a record of the steps it has taken in each individual's case.
8. The DHS TRIP process can result in removal of a traveler from the No Fly List.

9. Pursuant to prior government policy, DHS TRIP determination letters did not disclose whether or not the traveler who sought redress was included on the No Fly List.
10. The government has revised the DHS TRIP procedures for citizens and lawful permanent residents of the United States (together, U.S. persons) who make redress inquiries following the denial of commercial aircraft boarding as a result of being placed on the No Fly List.
11. The government's public descriptions of the current DHS TRIP redress process are found in declarations filed in lawsuits, including *Latif v. Lynch*. The current DHS TRIP redress process described in those declarations has not been subject to a rule-making process and is not published in the Federal Register or the Code of Federal Regulations.
12. The procedures governing decision-making and information-sharing responsibilities and authorities between the TSC and TSA in the current DHS TRIP redress process are memorialized in public court filings and inter-agency memoranda that are not public. To the extent that *ex parte* court filings address the procedures governing decision-making and information-sharing responsibilities and authorities between the TSC and TSA, the information in those filings is not publicly available.
13. The new redress procedures now provide that a United States person who (a) purchases an airline ticket for a flight to, from, or over the United States; (b) is denied boarding onto that flight due to being on the No Fly List; (c) subsequently files a redress inquiry regarding the denial of boarding with DHS TRIP; (d) provides all information and documentation required by DHS TRIP; and (e) is determined to be appropriately on the No Fly List at the conclusion of the TSC's review of the redress inquiry, will receive a letter stating that "you are on the

No Fly List” and providing the option to request additional information and specific instructions for doing so.

14. If, at the conclusion of the TSC’s review, the TSC determines that the individual is not currently on the No Fly List, it notifies DHS TRIP that the requester is not on the No Fly List. DHS TRIP will then advise the individual that the U.S. government knows of no reason that the individual should be unable to fly.
15. If an individual who receives a letter stating that he or she is on the No Fly List timely requests additional information, DHS TRIP will respond with a second letter that identifies the specific criterion or criteria under which the individual was placed on the No Fly List and any unclassified summary of reasons.
16. The second DHS TRIP letter states that the individual may seek additional review of his or her placement on the No Fly List and may submit any information he or she believes may be relevant to determining whether continued placement on the List is appropriate.

[The parties were not able to agree on stipulations concerning the TSC’s role and responsibilities, including its role in determining or providing the criteria for an individual’s placement on the No Fly List. The parties also were not able to agree on stipulations concerning the nature and extent of any consultations between DHS TRIP and other agencies at this stage of the redress process, and specifically regarding interagency consultation to determine what information an individual who receives a letter stating that he or she is on the No Fly List should receive.]

17. If an individual timely responds to the second letter and requests additional review, DHS TRIP forwards the response and any enclosed information to the TSC for consideration. Upon completion of the TSC's review of the materials submitted to DHS TRIP, the TSC provides a written recommendation to the TSA Administrator as to whether the individual should be removed from or remain on the No Fly List, and the reasons for that recommendation.

18. The information the TSC provides to the TSA administrator may be a summary of the information TSC relied on to make its determination regarding whether the individual should remain on the No Fly List, and does not necessarily include all underlying documentation. The TSC's recommendation to the TSA Administrator may contain classified and/or law enforcement sensitive information.

[The parties were not able to agree on stipulations concerning the extent to which the TSC determines what information is included in the recommendation to the TSA Administrator, the TSC's consultations with other agencies in determining what information to include in the recommendation to the TSA Administrator, and whether the TSA Administrator receives—or can access upon request—all information that the TSC considered in making its recommendation.]

19. The TSA Administrator may request additional information or consult with the TSC and/or other relevant agencies, including any nominating agency, regarding any concerns that may arise from the recommendation or the record before the Administrator.

20. After DHS TRIP receives the recommendation from TSC, it provides the recommendation to the TSA Administrator, along with the requester's complete DHS TRIP file (including all information submitted by the requester).

21. If the TSA Administrator issues a final order maintaining an individual on the No Fly List, the order will state the basis for the decision to the extent possible without compromising national security or law enforcement interests.

[The parties were not able to agree on stipulations concerning the process by which the TSC and/or any other agencies determine what information can be disclosed in TSA's final order.]

22. The TSA Administrator may determine, after review of the record before the Administrator and any appropriate interagency consultation, that the individual should not be on the No Fly List, notwithstanding the TSC's recommendation that the individual remain on the No Fly List. In such a case, the Administrator may issue an order determining that the individual should not be on the No Fly List.

23. Upon issuance of an order by the TSA Administrator, DHS TRIP will provide the TSC and the individual with a copy of the final order.

Procedures applied to the Plaintiffs in this litigation:

[The parties were not able to agree on stipulations concerning the nature and extent of the TSC's role in determining that certain Plaintiffs were or were not on the No Fly List, the nature and extent of any interagency consultation regarding that determination, or the determination as to what information would be provided to individual Plaintiffs on the No Fly List.]

24. DHS TRIP sent each of the six Plaintiffs a single letter informing him of his status on the No Fly List, identifying the specific criterion or criteria under which he was placed on the List, and providing an unclassified summary of reasons for his continued placement on the No Fly List. The letters also informed each of these six Plaintiffs of the opportunity to respond and seek additional review.
25. All six of the Plaintiffs who were informed that they were on the No Fly List responded seeking additional review. Upon DHS TRIP's receipt of those responses, DHS TRIP forwarded the responses to the TSC. The TSC and DHS TRIP then followed the revised DHS TRIP procedures described above. Pursuant to this process, TSC provided the TSA Administrator with a written recommendation that each remaining Plaintiff should remain on the No Fly List.
26. The TSA Administrator concurred with the TSC's recommendation as to each of the six remaining Plaintiffs and issued orders to five of the Plaintiffs on January 21, 2015, and to the remaining Plaintiff on January 28, 2015.

Dated: December 20, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing joint stipulations was delivered to all counsel of record via the Court's ECF notification system.

s/ Brigham J. Bowen _____

Brigham J. Bowen