

HINA SHAMSI (admission *pro hac vice* pending)
Email: hshamsi@aclu.org
NUSRAT JAHAN CHOUDHURY (admitted *pro hac vice*)
Email: nchoudhury@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212.519.2500; Fax: 212.549.2654

STEVEN M. WILKER, OSB No. 911882
Email: steven.wilker@tonkon.com
Tonkon Torp LLP
1600 Pioneer Tower
888 SW 5th Avenue
Portland, OR 97204
Tel: 503.802.2040; Fax: 503.972.3740
Cooperating Attorney for the ACLU Foundation of Oregon

KEVIN DÍAZ, OSB No. 970480
Email: kdiaz@aclu-or.org
ACLU Foundation of Oregon
P.O. Box 40585
Portland, Oregon 97240
Tel: 503.227.6928; Fax: 503.227.6948
Attorneys for Plaintiffs

STUART F. DELERY
Principal Deputy Assistant Attorney General
Civil Division
JODY H. HUNT
Director
Federal Programs Branch
DIANE KELLEHER
diane.kelleher@usdoj.gov
AMY POWELL
amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W., #7318
Washington, D.C. 20001
Tel: (202) 514-4775; Fax: (202) 616-8470
Attorneys for Defendants

- **Dates for filing all pleadings according to Federal Rules of Civil Procedure 7(a) and 15** – Plaintiffs have already filed a Complaint (June 30, 2010, Docket Entry # 1), an Amended Complaint (August 6, 2010, Docket Entry # 15), and a Second Amended Complaint (February 4, 2011, Docket Entry # 64). Plaintiffs will file a Third Amended Complaint on January 11, 2013. Defendants anticipate that they will not move to dismiss the Third Amended Complaint pursuant to Federal Rule of Civil Procedure 12, although they do not waive the right to do so, and the parties have negotiated a process to permit Defendants to make a conclusive determination. Plaintiffs will provide a draft of their Third Amended Complaint to Defendants by December 21, 2012; Defendants will then review the Third Amended Complaint to determine if they believe there are any grounds for a Rule 12 dismissal. If Defendants conclude there are such grounds, they will advise the Plaintiffs by January 4 and the parties will attempt to resolve any issues by January 10, 2013. If the parties are unable to come to a resolution, the Defendants will advise the Court on January 11 and the parties will propose a schedule for briefing a Rule 12 motion.
- **Dates for the Court conference** – The parties request that the Court conduct the upcoming conference by phone, to avoid the need for travel. Counsel are available on the following dates to participate in a teleconference with the Court: December 12, 14, 18, 19.
- **Joinder of the Transportation Security Administration (TSA)** – The Court asked the parties to discuss “further consideration of joining TSA as a party.” Defendants are of the view that joinder of TSA is no longer required to adjudicate Plaintiffs’ claims, in light of the Ninth Circuit’s holding that complete relief may be accorded even in TSA’s

absence. *See Latif v. Holder*, 686 F.3d 1122, 1129 (9th Cir. 2012). Plaintiffs agree that TSA's participation in the case is not required to adjudicate the claims they have asserted. As Plaintiffs have previously stated to the Court, however, they do not object to the joinder of TSA, should the Court order it.

- **Dispositive Motions** – As stated above, Defendants anticipate that they will not move to dismiss the amended complaint pursuant to Rule 12, but do not waive their right to do so. The parties therefore jointly propose to stage the dispositive summary judgment briefing of the issues for the Court in two stages. In Stage 1, the parties will brief Plaintiffs' procedural due process claims for the Court's resolution. The parties believe the procedural due process claims can appropriately be resolved by dispositive motion. After the Court rules on the parties' Stage 1 dispositive motions, the parties would then propose to meet and confer about how the Court could resolve in Stage 2 the remaining claims, namely, Plaintiffs' substantive due process claims. The substantive due process claims challenge the alleged placement of each plaintiff on the No Fly List.

The parties propose the following schedule for the briefing of Stage 1 dispositive motions, which will be triggered by Plaintiffs' filing of a Third Amended Complaint:

- Third Amended Complaint – filed by January 11, 2013
- Defendants' Dispositive Motion – due February 13, 2013
- Plaintiffs' Opposition/Cross-Motion – due March 15, 2013
- Defendants' Reply – due April 5, 2013
- Plaintiffs' Reply – due April 19, 2013
- Sur-replies may only be filed with leave of Court.

A proposed order reflecting these dates is attached.

- **Date for completion of discovery** – The parties presently contemplate that they will be able to proceed without discovery for the Stage 1 briefing discussed above; the parties

will address whether discovery may be needed for the Stage 2 briefing after the Court's resolution of the Stage 1 dispositive motions.

- **Ex Parte Information** – The parties have discussed whether Defendants will include *ex parte* information in support of their dispositive motion in Stage 1. Defendants are likely to include such information in their filing and have provided Plaintiffs with a summary description of the types of *ex parte* information on which they will likely rely. Plaintiffs do not anticipate needing access to any of the described *ex parte* information in order to brief their procedural due process claims in Stage 1, although they do not waive the right to seek such access. The parties expect to address the propriety of Defendants' *ex parte* filings, and Plaintiffs' right to access all or some of Defendants' *ex parte* information, after the Court's resolution of the Stage 1 briefing.
- **Conferral as to possibility of Alternative Dispute Resolution (ADR)** – The parties do not believe that ADR will be useful to resolve the claims presented in this lawsuit. The parties are also not willing to consent to the appointment of a Magistrate Judge.

Dated: December 10, 2012

Respectfully Submitted,

/s/ Nusrat Jahan Choudhury

Hina Shamsi (Admission *pro hac vice*
pending)
Email: hshamsi@aclu.org
Nusrat Jahan Choudhury (Admitted *pro hac*
vice)
Email: nchoudhury@aclu.org
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STUART F. DELERY
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JODY H. HUNT
Director
Federal Programs Branch

/s/ Diane Kelleher

DIANE KELLEHER
E-Mail: diane.kelleher@usdoj.gov

Tel: 212.519.2500
Fax: 212.549.2654

Attorneys for Plaintiffs

AMY E. POWELL
E-Mail: amy.powell@usdoj.gov
Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 514-4775
Fax: (202) 616-8470

Attorneys for Defendants