UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

GULET MOHAMED,

Plaintiff,

v.

ERIC H. HOLDER, JR., *et al.*,

Defendants.

Case No. 1:11-CV-00050

DEFENDANTS' MOTION TO STAY

Defendants, through their undersigned counsel, hereby respectfully move the Court for an order staying all proceedings in this matter until January 16, 2015, to allow the Government to complete its revision of the administrative redress procedures that are the subject of Plaintiff's procedural due process claim. The grounds supporting this motion are fully explicated in the separately-filed memorandum of law in support of the motion. Pursuant to Local Rule 7(E), undersigned counsel for Defendants conferred with Plaintiff's counsel by email and telephone about this motion. By and through counsel, Plaintiff opposes the relief sought in this motion.

Dated: November 14, 2014

Respectfully submitted,

JOYCE R. BRANDA
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL DIVISION

DANA J. BOENTE
UNITED STATES ATTORNEY

DIANE J. KELLEHER
ASSISTANT BRANCH DIRECTOR
FEDERAL PROGRAMS BRANCH

AMY E. POWELL
JOSEPH C. FOLIO III
SAMUEL M. SINGER
TRIAL ATTORNEYS
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
20 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20001
TELEPHONE: (202) 514-9836
FAX: (202) 616-8460
E-MAIL: amy.powell@usdoj.gov

/S/
R. JOSEPH SHER
ASSISTANT UNITED STATES ATTORNEY
OFFICE OF THE UNITED STATES ATTORNEY
JUSTIN W. WILLIAMS UNITED STATES ATTORNEYS BUILDING
2100 JAMIESON AVE.,
ALEXANDRIA, VA. 22314
TELEPHONE: (703) 299-3747
FAX: (703) 299-3983
E-MAIL JOE.SHER@USDOJ.GOV

ATTORNEYS FOR THE DEFENDANTS

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record:

Gadeir I. Abbas
The Law Office of Gadeir Abbas
1155 F Street NW, Suite 1050
Washington, DC 20004
Phone: 720-251-0425
Fax: 720-251-0425
gadeir.abbas@gmail.com

DATED: NOVEMBER 14, 2014

/S/

R. JOSEPH SHER
ASSISTANT UNITED STATES ATTORNEY
OFFICE OF THE UNITED STATES ATTORNEY
JUSTIN W. WILLIAMS UNITED STATES ATTORNEYS' BUILDING
2100 JAMIESON AVE.,
ALEXANDRIA, VA. 22314
TELEPHONE: (703) 299-3747
FAX: (703) 299-3983
E-MAIL JOE.SHER@USDOJ.GOV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GULET MOHAMED, *Plaintiff*, v. ERIC H. HOLDER, JR., *et al*., *Defendants*.	Case No. 1:11-CV-00050

Exhibit 1
Defendants' Motion to Stay

Joint Status Report (Aug. 4, 2014), ECF No. 144, *Latif v. Holder*, Case 3:10-cv-0750 (D. Or.)

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

Hina Shamsi (Admitted *pro hac vice*)
Email: hshamsi@aclu.org
Hugh Handeyside (Admitted *pro hac vice*)
Email: hhandeyside@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 519-2500; Fax: (212) 549-2654

Ahilan T. Arulanantham (Admitted *pro hac vice*)
Email: aarulanantham@aclu-sc.org
Jennifer Pasquarella (Admitted *pro hac vice*)
Email: jpasquarella@aclu-sc.org
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90017
Tel.: (213) 977-9500; Fax: (213) 977-5297

Alan L. Schlosser (Admitted *pro hac vice*)
Email: aschlosser@aclunc.org
Julia Harumi Mass (Admitted *pro hac vice*)
Email: jmass@aclunc.org
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493; Fax: (415) 255-8437

Alexandra F. Smith (Admitted *pro hac vice*)
Email: asmith@aclu-nm.org
ACLU Foundation of New Mexico
P.O. Box 566
Albuquerque, NM 87103
Tel.: (505) 266-5915; Fax: (505) 266-5916

Mitchell P. Hurley (Admitted *pro hac vice*)
Email: mhurley@akingump.com
Christopher M. Egleson (Admitted *pro hac vice*)
Email: cegleson@akingump.com
Justin H. Bell (Admitted *pro hac vice*)
Email: bellj@akingump.com
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Tel.: (212) 872-1011; Fax: (212) 872-1002

Attorneys for Plaintiffs

STUART DELERY
Assistant Attorney General
Civil Division

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

AMY POWELL
amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W
Washington, D.C. 20001
Phone: (202) 514-9836
Fax: (202) 616-8470

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AYMAN LATIF, et al., *Plaintiffs*,	Case 3:10-cv-00750-BR
v. ERIC H. HOLDER, JR., et al., *Defendants*.	PARTIES' JOINT STATUS REPORT

JOINT STATUS REPORT

On June 24, 2014, this Court held that "the absence of any meaningful procedures to afford Plaintiffs the opportunity to contest their placement on the No-Fly List violates Plaintiffs' rights to procedural due process." Order at 60 (Docket #136). On that basis, the Court denied Defendants' Motion for Partial Summary Judgment and granted Plaintiffs' Cross-Motion for Partial Summary judgment as to Plaintiffs' procedural due process claims under the Fifth Amendment and the Administrative Procedures Act. The Court concluded that "Defendants (and not the Court) must fashion new procedures," Order at 61, and directed the parties to confer and file a Joint Status Report with their respective proposals and schedules. The parties have met and conferred telephonically and hereby submit their separate proposals for proceeding in this matter.

I. DEFENDANTS' PROPOSAL

Defendants submit that the appropriate way forward in this litigation in the absence of an immediate appeal is for the Court to allow Defendants a voluntary remand of Plaintiffs' individual claims for six months. During the next six months, Defendants intend to make

changes to the existing redress process regarding the No Fly List, in coordination with other agencies involved in aviation security screening, informed by the myriad legal and policy concerns that affect the Government's administration of the No Fly List and the redress process, and with full consideration of the Court's opinion.[1] In so doing, the Government will endeavor to increase transparency for certain individuals denied boarding who believe they are on the No Fly List and have submitted DHS TRIP inquiries, consistent with the protection of national security and national security information, as well as transportation security.[2] Once these new procedures have been developed, and also within the six months of the requested voluntary remand, Defendants intend to reopen and reconsider Plaintiffs' redress requests using the new process.[3] Should further litigation be necessary at the conclusion of those administrative proceedings, Defendants could then file a renewed dispositive motion on the basis of the application of these new procedures.

Plaintiffs' proposal for the Court to conduct further remedial proceedings is contrary to well-established law and to this Court's previous decision, committing these issues to the judgment of the Executive Branch. As the Court noted, Defendants are in the best position to consider and evaluate the benefits and costs of alternative or additional procedural safeguards and the interests of the Government in efficient adjudication, while giving due consideration to the national security implications of any new approaches to the administration of the No Fly List,

[1] Defendants have 60 days to decide whether to seek further review of the Court's June 24 order. No decision has been made yet. In the absence of an immediate appeal, a voluntary remand to Defendants is the most appropriate way to proceed.

[2] Among the issues that the agencies will consider is how broadly new procedures should be applied.

[3] Plaintiffs' substantive claims, which have been held thus far while the Court resolved the procedural questions, should also be remanded or continue to be held in abeyance. A remand for additional process could moot those claims with respect to some or all of the Plaintiffs, could affect the substantive basis for any placement decision made with respect to any Plaintiffs who are on the No Fly List, and would likely clarify any issues for review.

as well as any opportunities for Plaintiffs to respond. *See* June 24, 2014 Mem. Op. at 61 ("Although the Court holds Defendants must provide a new process that satisfies the constitutional requirements for due process, the Court concludes Defendants (and not the Court) must fashion new procedures that provide Plaintiffs with the requisite due process described herein without jeopardizing national security.").[4] Neither the Court nor the Plaintiffs possess this perspective, and thus any new procedures should be crafted by Defendants in the first instance and tested administratively prior to any further litigation. Remand is consistent with settled principles of administrative law. *See, e.g., SEC v. Chenery Corp.*, 332 U.S. 194 (1947); *Fla. Power & Light v. Lorion*, 470 U.S. 729, 744 (1985). Plaintiffs' ability to challenge the new process in court, should they wish to do so, will not be prejudiced. Plaintiffs' suggestion that the parties brief procedures that Defendants have neither devised nor applied puts the cart before the horse and would result in briefing that has little to no relation to the actual circumstances in this case.

Essentially, Plaintiffs are asking the Court to reconsider its view that the Defendants should fashion procedures in the first instance and decide precisely how the Government would apply these standards and oversee the administrative process as applied to Plaintiffs before the agencies have devised any revised procedures or applied them. Courts have routinely rejected this kind of judicial oversight in administrative process. *See generally Fla. Power & Light v. Lorion*, 470 U.S. 729, 744 (1985); *Dexter v. Colvin*, 731 F.3d 977 (9th Cir. 2013); *National*

[4] *See Rahman v. Chertoff*, 530 F. 3d 622, 627-28 (7th Cir. 2008) ("The problem (from plaintiffs' perspective) may be that Congress and the President worry at least as much about false negatives-that is, people who should be on a watch list but aren't-as about false positives (people who are on the list but shouldn't be, and people who aren't on the list but are mistaken for someone who is). Judges are good at dealing with false positives, because the victims come to court and narrate their grievances, but bad at dealing with false negatives, which are invisible. Any change that reduces the number of false positives on a terrorist watch list may well increase the number of false negatives. Political rather than judicial actors should determine the terms of trade between false positives and false negatives.").

Council of Resistance of Iran v. Dep't of State, 251 F.3d 192, 209 (D.C. Cir. 2001). The Court declined to do this in its June 24 Order, and there is no reason for it to undertake such action now. Such concerns are heightened in the area of national security, where courts lack the expertise to make sensitive judgments about handling of classified information and prediction of future threats.[5]

In order to devise a revised process and to thereafter re-process the Plaintiffs' individual redress requests, Defendants need sufficient time to do so. As explained in Defendants' initial motion to dismiss, as well as in the stipulated facts and in this Court's opinion, the redress process for individuals denied boarding who believe they are on a No Fly List involves a number of different federal agencies, some of which are not defendants in this action. In addition, revising administrative procedures involves important legal and policy questions and requires coordination between Defendants and these other agencies. A minimum of six months would be appropriate to undertake these efforts. This timeframe reflects the need to consult with the affected agencies, to consider the important legal and policy questions presented, and to ensure that the work is done correctly and comprehensively, while also allowing sufficient time to apply any new procedures to Plaintiffs. Plaintiffs' characterization of undue delay is untrue and unfair; Defendants' voluntary remand is a significant undertaking by multiple Government agencies to rework the existing administrative scheme and apply it to Plaintiffs.[6] Defendants also propose to submit a status report to the Court and to Plaintiffs in three months with any information that can be provided at that time.

[5] Moreover, Plaintiffs' proposal potentially embroils this Court directly in consideration of classified and otherwise sensitive information, raising significant questions of privilege that are unnecessary for the Court to decide. *See, e.g. Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010).

[6] Plaintiffs' proposal that Defendants submit briefing on new procedures less than two weeks after the deadline for Defendants' decision on whether to seek further review of the Court's Order is particularly unreasonable and presents a timeframe ill-suited to such a significant task.

II. PLAINTIFFS' PROPOSAL

To promote judicial economy and the timely resolution of Plaintiffs' constitutional claims, Plaintiffs propose that the parties expeditiously submit briefing to this Court on the new procedures the Court has ordered Defendants to fashion, in order to ensure that those procedures provide Plaintiffs with "the requisite due process." *See* Order at 61.

Still pending before this Court are Plaintiffs' substantive due process claims and their requests for declaratory and injunctive relief.[7] As the Court has recognized, "issues concerning the substance of any declaratory judgment and/or injunction remain for further development." Order at 5. Thus, the adequacy and timing of new procedures through which Plaintiffs may contest their placement on the No Fly List will inevitably come before the Court. Rather than deferring that adjudication (and further delaying the process due to Plaintiffs), the parties should address, and the Court should decide, the adequacy of Defendants' proposed procedures now. Doing so would allow the Court to adjudicate the remaining elements of Plaintiffs' claims and bring this matter to a definitive conclusion.

It bears emphasis that, as this Court has concluded,"[d]ue to the major burden imposed by inclusion on the No-Fly List, Plaintiffs have suffered significantly." Order at 30.[8] Plaintiffs

[7] Plaintiffs disagree with Defendants' assertion that they have 60 days to decide whether to seek further review of the Court's Order. Orders granting partial summary judgment are not, absent special circumstances, appealable final orders under 28 U.S.C. § 1291 because such orders—like this Court's Order—do not dispose of all claims and do not end the litigation on the merits. *Williamson v. UNUM Life Ins. Co. of Am.,* 160 F.3d 1247, 1250 (9th Cir.1998). Defendants could have moved promptly to certify the Court's Order for interlocutory review but have not done so. In any event, the standard for interlocutory certification is high and, Plaintiffs submit, is unlikely to be met here. *See* 28 U.S.C. § 1292(b); *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6 (9th Cir. 2002) (Section 1292(b) "must be construed narrowly"); *United States v. Woodbury*, 263 F.2d 784, 788 n.11 (9th Cir. 1959) (statute should be "applied sparingly and only in exceptional cases").

[8] Other courts have made similar findings regarding the harsh consequences of inclusion on the No Fly List. *See, e.g.*, *Gulet Mohamed v. Eric Holder, Jr., et al.*, No. 1:11-cv-50 (AJT/TRJ) (E.D. Va. Jan. 22, 2014) (finding that "[t]he impact on a citizen who cannot use a commercial aircraft is profound," and "placement on the No Fly List is life defining and life restricting across a range of constitutionally protected activities and aspirations; and a No Fly List designation transforms a person into a second class

continue to suffer the severe consequences of their inclusion on the No Fly List, over four years after they initiated this action. Further delay would only compound that injury. Plaintiffs continue to believe that this Court is best equipped to resolve Plaintiffs' claims arising out of their inclusion on the No Fly List.[9] Given the duration and severity of the restrictions on their liberty, Plaintiffs submit that they should be given constitutionally adequate notice and a meaningful opportunity to be heard promptly, and within the context of this litigation.[10]

Briefing on the new procedures—and the remedy now due—follows logically from the Court's Order: once it has been determined that the Due Process Clause applies and has been violated, "the question remains what process is due." *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 1493 (1985); *see also KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 710 F. Supp. 2d 637, 643 (N.D. Ohio 2010) (following determination that government had violated charity's procedural due process rights, court requested additional briefing from parties on remedy). To that end, the parties should brief now—and the Court should decide—the procedures and standards that would satisfy the general requirements the Court set forth in its Order. Specifically, the parties' briefing should address:

- The constitutionality of the substantive criteria and evidentiary standards that formed the basis for Plaintiffs' inclusion on the No Fly List;

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citizen, or worse"); *Ibrahim v. Department of Homeland Security, et al.*, No. C06-0545-WHA (N.D. Cal. Jan. 14., 2014) (detailing the "litany of troubles" the plaintiff had endured because of her placement on the No Fly List).

[9] As the Ninth Circuit made clear in its jurisdictional ruling in this case, this Court has the authority to adjudicate the validity of Plaintiffs' placement on the No Fly List. *See Latif v. Holder*, 686 F.3d 1122, 1129–30 (9th Cir. 2012).

[10] On several occasions during the course of this litigation, Plaintiffs have urged that the due process inquiry should be bifurcated, and that the parties should have an opportunity to brief the issue of remedy if the Court finds a procedural due process violation. *See* Reply Mem. in Supp. of Pls.' Cross-Mot. for Part. Summ. J. (Docket #104) at 13; Pls.' Suppl. Mem. in Supp. of Cross-Mot. for Part. Summ. J. (Docket #121) at 7 n.2; Pls.' Suppl. Reply Mem. in Supp. of Cross-Mot. for Part. Summ. J. (Docket #124) at 8. Now that the first part of the inquiry is complete, and the Court has found a procedural due process violation, the inquiry should proceed to briefing on remedy.

- What information constitutes the constitutionally-sufficient notice that Defendants must provide to Plaintiffs to contest their placement on the No Fly List; and
- The standard and procedures for this Court's review of Plaintiffs' inclusion on the No Fly List.

Plaintiffs propose that the parties submit briefs to Court on the following schedule:

- Defendants' brief, describing their proposed procedures, to be submitted on or before September 5, 2014;
- Plaintiffs' Response to be submitted on or before September 19, 2014;
- any reply by Defendants to be submitted on or before September 26, 2014.

Thus, Plaintiffs' proposal takes into account the Court's ruling and gives it effect: Defendants would propose new procedures (including procedures related to the handling of sensitive or classified information, Order at 61-62); Plaintiffs would respond to those procedures; and, the court would adjudicate any disputes. Proceeding in this manner would serve Plaintiffs' interests in just and expeditious resolution of their claims without compromising the government's interest in protecting national security.

By contrast, Defendants' proposal would not promote prompt and efficient resolution of the claims before *this* Court. As a threshold matter, the Court has directed Defendants to fashion a process to remedy the harm Plaintiffs have suffered, but Defendants *still* have not done so and propose several more months' delay. The continued delay results in a continuing violation of Plaintiffs' rights to due process.

Although Defendants' proposal to fashion a new set of administrative procedures generally applicable to others on the No Fly List is both necessary and welcome, Defendants' plan for drawing up that procedure should not hinder the resolution of Plaintiffs' claims now. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 2492 (2001) (holding that individual alien plaintiffs could bring habeas challenges to indefinite detention despite the government's

assertion that the Court should defer to executive branch rulemaking); *Ibrahim*, No. C06-0545-WHA (Jan. 14., 2014) (concluding that DHS TRIP is inadequate and setting forth the specific process due to the plaintiff). And for the reasons set forth above—the need for and ability of the Court to adjudicate Plaintiffs' claims that are before it—there is no need for Plaintiffs to go through another round of administrative review.

Moreover, Defendants' invocation of "settled principles of administrative law" is inapposite and unsupported by their case citations. Each of those cases involved review of adverse agency *action*. *See SEC v. Chenery Corp.*, 332 U.S. 194 (1947) (disapproval by Securities and Exchange Commission of regulated utility's reorganization plan); *Fla. Power & Light v. Lorion*, 470 U.S. 729 (1985) (denial by Nuclear Regulatory Commission of petition to suspend operating license); *Dexter v. Colvin*, 731 F.3d 977 (9th Cir. 2013) (denial by Social Security Administration of request for hearing on application for benefits); *National Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192 (D.C. Cir. 2001) (designation of organizations by State Department as "foreign terrorist organizations"). This case is very different: it is a constitutional challenge to a set of agency *procedures*, which the Court has now concluded are "wholly ineffective." Order at 60. Defendants' theory may have been valid if they had won the jurisdictional arguments they made to the Ninth Circuit—but they did not. *See Latif*, 686 F.3d at 1130 (remanding Plaintiffs' constitutional procedural challenge "for such further proceedings as may be required to make an adequate record to support consideration of their claims"). There is no record of agency action before the Court, and thus no basis for the Court to remand this case for "additional investigation or explanation." *See Fla. Power & Light*, 470 U.S. at 744.

Finally and relatedly, Plaintiffs fear that leaving the adequacy of the procedures to Defendants will only result in additional delays and a continuation of the limbo in which

Plaintiffs have languished for years. Defendants' proposal that they be permitted to amend their constitutionally-deficient process in a manner that is as unilateral, one-sided, and non-participatory as the original process increases the likelihood that the new process will itself be subject to challenge, whether by Plaintiffs or others. Given the history of this litigation to date, it is critical that Defendants' proposed process with respect to Plaintiffs include input from Plaintiffs and direction from the Court, so as to satisfy the requirements set forth in the Order. Otherwise, it is virtually certain that six months from now, Plaintiffs will be in exactly the same position they are in today—before this Court, litigating the adequacy of the procedures Defendants devise.

Plaintiffs therefore respectfully request that the Court order the parties to submit briefing on the procedures Defendants propose—the logical and necessary next step in adjudicating Plaintiffs' claims.

Dated: August 4, 2014

Respectfully Submitted,

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

s/ *Hina Shamsi*
Hina Shamsi (Admitted *pro hac vice*)
Email: hshamsi@aclu.org
Hugh Handeyside (Admitted *pro hac vice*)
Email: hhandeyside@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 519-2500; Fax: (212) 549-2654

Ahilan T. Arulanantham (Admitted *pro hac vice*)
Email: aarulanantham@aclu-sc.org
Jennifer Pasquarella (Admitted *pro hac vice*)
Email: jpasquarella@aclu-sc.org
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90017
Tel.: (213) 977-9500; Fax: (213) 977-5297

Alan L. Schlosser (Admitted *pro hac vice*)
Email: aschlosser@aclunc.org
Julia Harumi Mass (Admitted *pro hac vice*)
Email: jmass@aclunc.org
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493; Fax: (415) 255-8437

STUART DELERY
Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

s/ *Amy Powell*

AMY POWELL
E-Mail: amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 514-9836
Fax: (202) 616-8470

Attorneys for Defendants

Alexandra F. Smith (Admitted *pro hac vice*)
Email: asmith@aclu-nm.org
ACLU Foundation of New Mexico
P.O. Box 566
Albuquerque, NM 87103
Tel.: (505) 266-5915; Fax: (505) 266-5916

Mitchell P. Hurley (Admitted *pro hac vice*)
Email: mhurley@akingump.com
Christopher M. Egleson (Admitted *pro hac vice*)
Email: cegleson@akingump.com
Justin H. Bell (Admitted *pro hac vice*)
Email: bellj@akingump.com
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Tel.: (212) 872-1011; Fax: (212) 872-1002

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GULET MOHAMED, *Plaintiff*, v. ERIC H. HOLDER, JR., *et al*., *Defendants*.	Case No. 1:11-CV-00050

Exhibit 2
Defendants' Motion to Stay

Joint Status Report (Sept. 3, 2014), ECF No. 148, *Latif v. Holder*, Case 3:10-cv-0750 (D. Or.)

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

Hina Shamsi (Admitted *pro hac vice*)
Email: hshamsi@aclu.org
Hugh Handeyside (Admitted *pro hac vice*)
Email: hhandeyside@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 519-2500; Fax: (212) 549-2654

Ahilan T. Arulanantham (Admitted *pro hac vice*)
Email: aarulanantham@aclu-sc.org
Jennifer Pasquarella (Admitted *pro hac vice*)
Email: jpasquarella@aclu-sc.org
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90017
Tel.: (213) 977-9500; Fax: (213) 977-5297

Alan L. Schlosser (Admitted *pro hac vice*)
Email: aschlosser@aclunc.org
Julia Harumi Mass (Admitted *pro hac vice*)
Email: jmass@aclunc.org
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493; Fax: (415) 255-8437

Alexandra F. Smith (Admitted *pro hac vice*)
Email: asmith@aclu-nm.org
ACLU Foundation of New Mexico
P.O. Box 566
Albuquerque, NM 87103
Tel.: (505) 266-5915; Fax: (505) 266-5916

Mitchell P. Hurley (Admitted *pro hac vice*)
Email: mhurley@akingump.com
Christopher M. Egleson (Admitted *pro hac vice*)
Email: cegleson@akingump.com
Justin H. Bell (Admitted *pro hac vice*)
Email: bellj@akingump.com
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Tel.: (212) 872-1011; Fax: (212) 872-1002

Attorneys for Plaintiffs

STUART DELERY
Assistant Attorney General
Civil Division

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

AMY POWELL
amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W
Washington, D.C. 20001
Phone: (202) 514-9836
Fax: (202) 616-8470

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AYMAN LATIF, et al., *Plaintiffs*,	Case 3:10-cv-00750-BR
v. ERIC H. HOLDER, JR., et al., *Defendants*.	PARTIES' SUPPLEMENTAL JOINT STATUS REPORT

SUPPLEMENTAL JOINT STATUS REPORT

Following the filing of the parties' Joint Status Report on August 4, 2014 (Docket #144), the Court directed the parties to confer regarding six questions it posed, and to submit an additional joint status report setting forth the parties' positions as to those questions. The parties have now conferred regarding the Court's questions and submit this Supplemental Joint Status Report in accordance with the Court's order.

1. **Do Defendants intend to seek an interlocutory appeal, and, if so, within what time-frame do Defendants propose to seek such an appeal?**

Defendants' Response: Defendants do not intend to seek an appeal of the Court's interlocutory decision entered on June 24, 2014 at this time.

Plaintiffs' Response: Plaintiffs have asked for clarification whether Defendants will seek to appeal the Court's decision at any time, and have received none. To the extent Defendants had 60 days to decide whether to seek interlocutory appeal, that time has now expired.

2. **What is the minimum realistic time-frame within which Defendants can produce new procedures to consider each Plaintiff's status?**

3. **What is the least amount of time needed to reconsider each Plaintiff's DHS TRIP inquiries after such new procedures have been promulgated?**

Defendants' Response: With respect to questions 2 and 3, Defendants respectfully submit that the six-month period they have proposed is the minimum realistic time-frame needed to complete the process they have described, including developing revised procedures, applying the revised procedures to Plaintiffs and issuing final administrative orders. As previously described, creating revised procedures is a significant undertaking, involving balancing the complex needs of multiple federal agencies having a role in protecting aviation security from terrorist threats, with full consideration of the multiple issues identified by the Court. In particular, six months is needed because developing revised procedures will require the relevant agencies to assess the impact on national security of disclosing additional information.

Accordingly, Defendants have already commenced the interagency discussions necessary to develop revised procedures and expect that, by around mid-November, they can provide an update with publicly available information. The time needed to complete the process thereafter will depend on whether additional work remains to refine the process at that time, whether any individual Plaintiffs are on the No Fly List, what kind of process is provided to individual Plaintiffs as a result of the revised procedures, and whether any Plaintiffs' responses to that process requires additional deliberation or investigation by the Government. Despite these uncertainties, Defendants are nonetheless committed to complete all of these steps and issue final orders prior to February 2, 2015.

As noted in Defendants' portions of the parties' August 4, 2014 status report (Dkt. 144), Plaintiffs' suggestion that the parties forge ahead with briefing on the legality of procedures that Defendants have not yet devised nor applied is neither productive nor logical. The Court left to Defendants the obligation to revise those procedures. Plaintiffs' characterization of undue delay

is untrue and unfair; Defendants' voluntary remand is a significant undertaking by multiple Government agencies to rework the existing administrative scheme and apply it to Plaintiffs. This ordering ensures that matters are appropriately vetted within the relevant agencies before they are presented to the Court. In addition, Defendants submit that briefing any procedures before they are applied to Plaintiffs would be similarly unhelpful, as the issues may not be fully articulated for the Court at that time.

Plaintiffs' Response: Even if Defendants abide by the time-frame they suggest, their proposal virtually guarantees over a year of litigation for Plaintiffs who remain on the No Fly List after Defendants apply their unilaterally-devised procedures. That is because, if the Court accepts Defendants' proposal, Plaintiffs will not be able to start briefing any challenges they have to the constitutional adequacy of Defendants' new procedures until February 2015, and the Court will not be able to adjudicate that procedural due process challenge—let alone Plaintiffs' substantive due process claims—until after that time. In essence, Plaintiffs who remain on the No Fly List will be worse off than they are now—over four years after they initiated this litigation, and several months after this Court recognized Plaintiffs' constitutionally-protected liberty interest in travel and held that Plaintiffs' procedural due process rights have been violated. Plaintiffs' position therefore remains that the procedural posture of this case calls for immediate briefing from the parties on the new procedures the Court has ordered the Defendants to fashion, so that the Court may adjudicate Plaintiffs' substantive due process claims and requests for declaratory and injunctive relief promptly.

Defendants' responses to the Court's questions exacerbate Plaintiffs' concern that additional litigation is inevitable: Defendants' insistence that they, and they alone, must decide on the form and content of new redress procedures speaks volumes about the likelihood that the

remand Defendants propose will result in a system that requires Plaintiffs to renew their procedural due process challenge. Defendants appear to treat the Court's Order as merely one factor to be considered in devising an adequate redress process, rather than as a statement of constitutional imperatives. They have offered no reassurance that they will provide Plaintiffs with notice "reasonably calculated to permit Plaintiffs to submit evidence relevant to the reasons for their respective inclusions on the No Fly List," or the meaningful opportunity to be heard that is at the heart of the Due Process Clause and this Court's Order. *See* Op. and Order, Docket #136 at 61. Rather than stating an intent to *comply* fully with the Court's order, Defendants say only that they will give it "full consideration," and "endeavor to increase transparency" while taking into account "myriad legal and policy concerns" related to the No Fly List. Joint Status Report, Docket #144 at 4. It should go without saying that the Court's Order is not an advisory opinion for Defendants to consider; it is an order setting forth terms with which Defendants must comply.

Should the Court permit Defendants to proceed as they propose, however, Plaintiffs respectfully submit that Defendants should not then subject Plaintiffs to the new administrative procedures—the constitutionality of which would remain in question—until the parties have briefed the constitutional adequacy of those procedures. Although it is Plaintiffs' view that allowing Defendants to fashion procedures through a one-sided, non-adversarial process is neither fair nor efficient, Plaintiffs respectfully submit that it makes even less sense for Defendants to take several additional months to then apply those procedures to Plaintiffs, when any defects in the procedures would invalidate the results of the process and lead to further iterations of challenge and review—and, of course, further delay. Thus, should the Court permit Defendants to take three months to devise new procedures, Plaintiffs ask the Court then to permit

the parties to brief any challenges Plaintiffs have to the constitutional adequacy of those procedures.

4. **Can interim steps be taken to permit Plaintiffs to fly as may be needed while this action remains pending in the trial court and during any appeal? What would such interim steps look like?**

Defendants' Response: If a person is on the No Fly List, it is because the Executive Branch has evaluated the available intelligence and deemed that person a threat to civil aviation and/or national security and has accordingly determined that he or she should be prevented from boarding an aircraft. *See* 49 U.S.C. §114(h)(3). The decision to place an individual on the No Fly List involves matters of national security and intelligence, and, as the Court recognized, the Government and public interest in protecting national security is particularly compelling. *See* Slip Op. at 41-42 Under the current circumstances of this case, it therefore would be inappropriate and unwarranted for the Court to order the Government to permit an individual on the No Fly List to board a civilian aircraft, where the Court has not addressed the merits of Plaintiffs' substantive claims. For the same reasons, the Court should not order any such preliminary remedy, particularly while the relevant Government agencies are undertaking the revision of procedures and a renewed review of Plaintiffs' redress requests. Such relief would be entirely unrelated to Plaintiffs' procedural claims and therefore unwarranted; although such relief could be arguably related to their substantive claims, the Court has not ruled on those claims, and Plaintiffs have not made a showing under the standard for extraordinary preliminary relief. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In any event, even if Plaintiffs ultimately prevail on some or all of their substantive claims, the appropriate remedy would be remand to determine whether or not such an individual should be placed on a No Fly List. Because such a remand is ongoing, there is no reason for the Court to consider preliminary relief.

In particular, Plaintiffs suggest that Defendants somehow apply to them the inapposite procedures that exist to address the unique situation in which a U.S. person is denied boarding on flights to the United States from abroad. In that specific and unusual situation, the Government has developed procedures for attempting to resolve the travel difficulties of U.S. persons returning to the United States. It would be inappropriate to order some type of application of these procedures to the Plaintiffs in this case, none of whom presently claim to be unable to enter the United States or claim any entitlement to preliminary relief.

However, it is possible that some alleged travel difficulties could be resolved at this time without the imposition of extraordinary and unwarranted measures. Given the current circumstances of this case, Defendants would be willing to provide the names of those Plaintiffs (if any) who are not currently on the No Fly List to Plaintiffs and their counsel under an appropriate protective order.[1] This measure would provide clarity to individual Plaintiffs (if any) who are not on the No Fly list and eliminate any alleged hardship.[2]

Plaintiffs' Response: Defendants' proposal to inform certain Plaintiffs that they are not on the No Fly List is long overdue, but does nothing to alleviate the continuing hardships for the

[1] No Fly List status is currently considered sensitive information, and, as explained in Defendants' initial status report, Defendants are currently undertaking extensive interagency deliberations regarding revised redress procedures, with full consideration of the Court's order, including about how this information will be addressed in such procedures (for example, precise contexts, timing, and wording). In addition, Plaintiffs have alleged that they were and are stigmatized by any inferences which can be drawn about their alleged status on the No Fly List when they were denied boarding. To permit public dissemination of an official disclosure of No Fly list status could interfere with the agencies' ongoing deliberations about broader revisions to the redress process and also could implicate the kinds of allegations Plaintiffs have made. Defendants thus request that the Court enter a protective order that limits the dissemination of this information to Plaintiffs and their counsel until such time as the remand is concluded. Defendants counsel consulted with plaintiffs' counsel about the possibility of a protective order, and Plaintiffs' counsel did not take a position prior to filing.

[2] Defendants understand that the Court found that due process requires disclosure of status as part of a constitutionally sufficient redress process, which the Court has charged Defendants with devising. The Court has not, to our knowledge, ordered immediate disclosure outside that process, as Plaintiffs seem to believe.

Plaintiffs who remain on the No Fly List. Indeed, Defendants offer nothing more than to take steps to carry out what the Court has already ordered: notice to Plaintiffs of their status on or off the No Fly List. Defendants' refusal to take interim steps makes little sense given the record in this case, which shows that Defendants can—and have—taken such measures in the past.[3]

As an initial matter, it bears repeating that each Plaintiff has stated in a sworn declaration to this Court that he or she poses no threat to aviation security. Nonetheless, Plaintiffs are willing to submit to additional security measures on an interim basis if doing so would enable them to fly while their remaining claims are being adjudicated, particularly if the Court permits Defendants to take at least six months to fashion administrative redress procedures and, as Defendants propose, apply those procedures to Plaintiffs—after which further constitutional review of the new procedures and this Court's judicial review of Defendants' substantive determinations would still need to occur. Pending such a drawn-out process, Plaintiffs must continue to live under a regime that this Court has already adjudicated unconstitutional.

Defendants could take interim measures that, at a minimum, permit Plaintiffs to fly to and from the United States if they agree to take the steps that Defendants utilized to permit several of the Plaintiffs to return home at the outset of this case. These steps include: providing the government with advance notice of their travel plans; booking on U.S.-based carriers; arriving at departure airports earlier than usual; undergoing additional screening prior to boarding; and, if necessary, the (presumably undisclosed) use of federal air marshals on flights.

Defendants have already used one or more of these measures in order to avoid litigation over the preliminary injunction filed by Plaintiffs who were previously stranded overseas. *See* Mem. in Supp. of Mot. for Prelim. Inj., Docket #21 at 36; Joint Status Report, Docket #28 at 3-

[3] Although Plaintiffs have not asked the Court to order such measures, they reserve their right to do so, including in the form of injunctive relief.

4.[4] Defendants instructed Plaintiffs who were abroad to provide the U.S. embassies in the countries where they were stranded with itineraries for return travel in advance of their dates of travel, and the embassies then coordinated with local authorities to permit the Plaintiffs to board their flights. As an interim measure only, Plaintiffs believe such measures would be appropriate to permit them to fly either domestically or abroad while this action is pending.[5] Defendants' refusal to provide these measures, combined with their proposal delaying resolution of Plaintiffs' substantive due process and other remaining claims, perpetuate the personal and constitutional injuries they continue to suffer.

5. **If the Court determines a stay and partial remand of the type that Defendants propose is reasonable, is there any reason why the case could not simultaneously proceed in this Court to litigate Plaintiffs' substantive due-process and declaratory-judgment claims?**

Defendants' Response: Plaintiffs' substantive claims are inextricably bound up with the procedural claims. Plaintiffs' substantive due process claims concern the reasons underlying any government action. Substantive due process requires that certain fundamental rights must not be

[4] Defendants did not assure the Plaintiffs stranded overseas that they would subsequently be able to travel abroad again after having returned to the United States. Plaintiffs Faisal Kashem and Elias Mohamed therefore elected not to return to the United States because they did not want to risk being unable to return to complete their studies overseas. *See* Joint Status Report, Docket #28 at 3-4. Plaintiff Mashal Rana has also not availed herself of this process because she fears being unable to return abroad to be with her husband. Interim measures should include the additional protection Plaintiffs seek, so as to allow these plaintiffs to finally avail themselves of their rights as U.S. citizens.

[5] Defendants have since extended those procedures to all U.S. citizens or lawful permanent residents ("LPRs") who are stranded overseas because of their presumed status on the No Fly List. The procedures call for such individuals to contact the State Department's Office of Overseas Citizens Services ("OCS") or a responsible official at a U.S. embassy abroad regarding denial of permission to board U.S.-bound airplanes; present OCS or the official with a proposed itinerary for return travel with advance notice; and purchase the ticket once OCS or the official has communicated approval for the proposed itinerary. Individuals with approved itineraries are advised to arrive at the airport at least four hours before their flights depart, in order to allow for any additional screening. *See* American Civil Liberties Union, Know Your Rights: What to Do if You Think You're on the No Fly List, *available at* https://www.aclu.org/national-security/know-your-rights-what-do-if-you-think-youre-no-fly-list (compiling information based on instructions the government has given the ACLU when the ACLU seeks to help travelers apparently on the No Fly List return home, and the experiences of those travelers).

abridged by the legislature absent a "compelling" governmental interest and narrow tailoring, and that other liberty interests be rationally related to legitimate government interests. *See generally Washington v. Glucksberg*, 521 U.S. 702 (1997). Either inquiry involves a careful examination of the Government's rationale for an action. Moreover, evaluation of the substantive Administrative Procedure Act claims requires examination of the administrative record supporting the decision at issue. The relevant records and the reasoning for maintaining a No Fly listing (if any) for Plaintiffs are nearly certain to be affected by the revised redress procedures that Defendants are developing and plan to apply to Plaintiffs; for example, the consultation of any additional materials submitted by any Plaintiff as part of that process. If such information is submitted and considered during the remand, it could change the agencies' reasoning and affect the substantive outcome.

There are a multitude of possible outcomes from the application of revised procedures to Plaintiffs that could affect the Court's consideration of Plaintiffs' substantive claims and counsel against proceeding with such claims at this time. If a Plaintiff was, but is no longer on the No Fly List at the conclusion of the remand, that Plaintiff's "substantive" claims would be entirely moot. If a Plaintiff remains on the No Fly List at the conclusion of the remand, this decision with respect to redress will be a new agency action, and the analysis underlying such a placement may have changed at least in part. To adjudicate the present claims, when the Government has undertaken to revise the procedures forming the basis for those claims and apply them to Plaintiffs, would waste the resources of the parties and the Court; it also would unnecessarily interfere in ongoing agency deliberations. In short, the issues for judicial review of Plaintiffs' substantive claims would be clarified and potentially narrowed following Defendants' actions,

and thus, continuing to litigate such claims now would not promote an efficient resolution of this case and would be disruptive of the ongoing interagency process.

In general, voluntary remand is consistent with the principle that "[a]dministrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider." *Trujillo v. General Electric Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980); *see also Lute v. Singer Co.*, 678 F.2d 844, 846 (9th Cir. 1982) (discussing *Trujillo*); *NRDC v. Norton*, 2007 WL 14283 at *8 (E.D. Cal. Jan. 3, 2007) (collecting cases). Courts retain the discretion to remand an agency decision when an agency has raised "substantial and legitimate" concerns in support of remand. *See Am. Forest Resource Council v. Ashe*, 946 F. Supp. 2d 1, 41 (D.D.C. 2013) (quoting *SFK USA, Inc. v. United States*, 254 F.2d 1022, 1029 (Fed. Cir. 2001)). Voluntary remand also serves to "save the Court's and the parties' resources." *See Am. Forest Resource Council v. Ashe*, 946 F.Supp.2d at 43; *see also Sierra Club v. Antwerp*, 560 F. Supp. 2d 21, 23 (D.D.C. 2008) ("an agency wishing to reconsider its action, should move the court to remand or hold the case in abeyance pending the agency's reconsideration") (citing *Anchor Line Ltd. v. Fed. Mar. Comm'n*, 299 F.2d 124, 125 (D.C. Cir. 1962)). .

Plaintiffs insist that the Court could engage in further substantive proceedings, but even assuming Plaintiffs' "substantive" claims have merit, the only appropriate result of such proceedings would be a remand order, allowing Defendants a plausible amount of time to remake and apply new procedures in reaching a new substantive decision, a process which Defendants are currently undertaking. This proposal is both more efficient than Plaintiffs' proposal and more consistent with the principles adopted in the Court's opinion, that

"Defendants (and not the Court) must fashion new procedures that provide Plaintiffs with the requisite due process described herein without jeopardizing national security." Slip Op. at 61.

Plaintiffs' Response: As a formal doctrinal matter, Plaintiffs are unaware of any legal rule that would bar Defendants from reconsidering the policies applicable to the Plaintiffs while this Court simultaneously considers the substantive due process and declaratory relief claims.

However, Plaintiffs respectfully submit that a remand for administrative review of Plaintiffs' claims that is concurrent with judicial review in this Court would be unnecessarily duplicative and would in practice almost certainly delay judicial resolution of Plaintiffs' pending claims. To adjudicate Plaintiffs' substantive due process claims and requests for declaratory and injunctive relief, Plaintiffs have asked this Court to (1) find that Defendants have violated Plaintiffs' constitutionally-protected liberty interests in travel and freedom from false stigmatization by placing Plaintiffs on the No Fly List, (2) declare that Defendants' policies, practices and customs violate the Fifth Amendment and the Administrative Procedures Act, and (3) require Defendants to remedy these violations by providing meaningful notice of the reasons for Plaintiffs' inclusion on the No Fly List, a meaningful opportunity to contest inclusion, and, after adjudication, removal of the Plaintiffs from the No Fly List. In its Opinion, the Court has already made the findings that are necessary for the declaratory relief requested in (2). It remains for the Court to adjudicate Plaintiffs substantive due process claims (1) and their injunctive remedy claims (3). If this judicial process occurs concurrent with agency administrative review, the Court and executive agencies would be making the same or similar determinations, perhaps with different outcomes.[6] Plaintiffs' original proposal would avoid such

[6] Defendants' assertion that "the only appropriate result" of a ruling in Plaintiffs' favor on their substantive claims would be a remand order to "apply new procedures in reaching a new substantive decision," *see supra*, misconstrues the nature of Plaintiffs' claims and implies that the only remedy for a substantive due process violation is further agency proceedings. That is not the case. If, as Plaintiffs'

duplication while also permitting expeditious resolution of Plaintiffs' remaining claims—and an end to the years-long limbo that has had such deeply negative consequences for Plaintiffs' personal and professional lives.

By contrast, Defendants' continued insistence on a unilaterally-devised administrative process delays resolution of Plaintiffs' claims, perpetuates uncertainty about the constitutional adequacy of revised redress procedures, and unnecessarily postpones the inevitable: this Court's judicial review of the validity of Plaintiffs' placement on the No Fly List. The interagency process that Defendants have initiated need not be complete before the issues for judicial review of Plaintiffs' remaining claims can be "clarified and potentially narrowed." *See* Defs.' Resp., *supra*. Each Plaintiff either is, or is not, on the No Fly List—something Defendants could inform them of immediately. And the new redress process is irrelevant to determining whether any given Plaintiff's placement on the No Fly List constituted a substantive due process violation.

Defendants cite to cases that are easily distinguishable and offer no guidance here. First, those cases are inapposite because they do not involve legal or factual circumstances that are analogous to those before this Court. *See Trujillo*, 621 F.2d at 1085-87 (determining whether agency could reconsider and rescind previously issued agency notice concerning plaintiffs' right to sue agency); *Lute*, 678 F.2d at 845-46 (same); *Ashe*, 946 F. Supp. 2d at 4 (considering challenge to habitat designation under Endangered Species Act); *Sierra Club*, 560 F. Supp. 2d at 22 (challenge to issuance of Clean Water Act permit).[7] Second, those cases do not involve

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request, the Court finds that Defendants violated Plaintiffs' substantive due process rights by placing them on the No Fly List, the Court plainly has the authority to order Plaintiffs to be removed from the List.

[7] *NRDC v. Norton*, 2007 WL 14283 (E.D. Cal. Jan. 3, 2007), actually undermines Defendants' argument. In that case, the plaintiffs challenged opinions issued by any agency (the U.S. Fish and Wildlife Service) under a statute (the Endangered Species Act). *Id.* at *1. In considering defendants' request for a voluntary

underlying administrative procedures that had been found to be unconstitutional, nor do they contemplate that new procedures would have to be fashioned in order to supply the plaintiffs in those cases with constitutional due process. *See id.* In other words, the courts in those cases had no reason to question the validity of agency procedures. Third, the courts in *Trujillo* and *Lute* did not hold that an agency must be permitted to reconsider its original decision, much less that a matter must be remanded to an agency, as Defendants inexplicably suggest. Instead, the courts merely held that agencies have the authority to reconsider original determinations—reconsiderations that occurred *before the plaintiffs in those cases ever filed federal lawsuits on the merits*. *Trujillo*, 621 F.2d at 1086; *Lute*, 678 F.2d at 845. Thus, the cases Defendants cite provide no authority in support of their position, and instead underscore that the government's proposed remand would be premature and inefficient under the circumstances of this case.

6. **What discovery, motion practice, and other case-management steps need to be accomplished to adjudicate Plaintiffs' remaining substantive due-process and declaratory-judgment claims and within what time-frame can these be reasonably accomplished?**

Defendants' Response: The claims of those Plaintiffs who are not on the No Fly List at the conclusion of the remand should likely be dismissed as moot absent some new claim. They would have received all relief to which they could possibly be entitled in this action. For Plaintiffs who are on the No Fly List at the conclusion of the remand, Defendants possibly may be able to file a new dispositive motion based on stipulated facts (as the parties have proceeded thus far) and/or a public administrative record based on the concluded administrative

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remand (as an alternative to dismissal), the court held that voluntary remand was inappropriate because there were factual disputes concerning the basis for the agency's opinions. *Id.* at *13. Key to the court's decision was its view that the case should not be remanded to the agency before a decision on the merits. *Id.* at *12; *see also id.* at *16 ("Plaintiffs are entitled to have their complaint decided on the merits, particularly given the fact that Defendants continue to rely on the challenged [opinions] as if they were lawfully enacted."). *Norton* provides persuasive authority in support of Plaintiffs' position, not Defendants'.

proceedings, depending on the outcome of the remand. If it is not possible to resolve the matter at that time on the basis of public information, the parties will need to consider the nature of any further proceedings; if the matter is in discovery, Defendants will need to consider the applicability of certain privileges that could shape the litigation, depending on the precise information at issue. *See, e.g., Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010). Rather than broach these issues prematurely, Defendants propose that the parties meet and confer shortly after conclusion of Defendants' action in the voluntary remand in order to propose to the Court prompt next steps at that time.

Defendants would appreciate the opportunity to address the Court on these issues, and represent that counsel is available for an in-person conference September 18 or 19 or anytime the week of September 22.

Plaintiffs' Response: Plaintiffs' proposal is that the parties submit briefing on procedures that will meet due process requirements and that will govern the adjudication of their claims. Such briefing would necessarily address notice to Plaintiffs of their status on the No Fly List; the form and extent of the disclosure to Plaintiffs regarding the basis of their placement on the No Fly List, such that they can meaningfully contest that basis (*see* Op. and Order, Docket #136 at 61); and the procedures for determining whether Defendants' placement of any given Plaintiff on the No Fly List amounted to a violation of that Plaintiff's substantive due process rights.

While it is Plaintiffs' position that issues related to discovery, motion practice, and case management dates should be addressed in this briefing, Plaintiffs do not envision a cumbersome or drawn-out process. Rather, under Plaintiffs' proposed schedule, briefing would be complete within approximately 45 days, after which the Court could decide on the standards and

procedures to be used for expedited hearings on Plaintiffs' remaining claims. Defendants would then issue the disclosures ordered by the Court. Once Plaintiffs finally have notice of the reasons for their inclusion on the No Fly List, they could assemble evidence relevant to those reasons and seek expedited discovery if necessary. The need for and extent of any such discovery would, of course, depend on the extent and content of Defendants' disclosures to Plaintiffs. Following a brief period for expedited discovery, Plaintiffs could either move for summary judgment on their substantive due process claims or proceed to a hearing before the Court to determine the propriety of their placement on the No Fly List.[8]

Plaintiffs' counsel are also available for an in-person conference before the Court on September 18, 24, or 30, and October 1 or 3.

[8] In the alternative, Plaintiffs respectfully request that the parties be permitted to brief any challenges Plaintiffs have to the constitutional adequacy of Defendants' procedures before those procedures are applied to Plaintiffs. *See supra*, Plaintiffs' Response to Question 3.

Dated: September 3, 2014

Respectfully Submitted,

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

s/ *Hina Shamsi*
Hina Shamsi (Admitted *pro hac vice*)
Email: hshamsi@aclu.org
Hugh Handeyside (Admitted *pro hac vice*)
Email: hhandeyside@aclu.org
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 519-2500; Fax: (212) 549-2654

Ahilan T. Arulanantham (Admitted *pro hac vice*)
Email: aarulanantham@aclu-sc.org
Jennifer Pasquarella (Admitted *pro hac vice*)
Email: jpasquarella@aclu-sc.org
ACLU Foundation of Southern California
1313 West Eighth Street
Los Angeles, CA 90017
Tel.: (213) 977-9500; Fax: (213) 977-5297

Alan L. Schlosser (Admitted *pro hac vice*)
Email: aschlosser@aclunc.org
Julia Harumi Mass (Admitted *pro hac vice*)
Email: jmass@aclunc.org
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111
Tel.: (415) 621-2493; Fax: (415) 255-8437

STUART DELERY
Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

s/ *Amy Powell*

AMY POWELL
E-Mail: amy.powell@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 514-9836
Fax: (202) 616-8470

Attorneys for Defendants

Alexandra F. Smith (Admitted *pro hac vice*)
Email: asmith@aclu-nm.org
ACLU Foundation of New Mexico
P.O. Box 566
Albuquerque, NM 87103
Tel.: (505) 266-5915; Fax: (505) 266-5916

Mitchell P. Hurley (Admitted *pro hac vice*)
Email: mhurley@akingump.com
Christopher M. Egleson (Admitted *pro hac vice*)
Email: cegleson@akingump.com
Justin H. Bell (Admitted *pro hac vice*)
Email: bellj@akingump.com
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Tel.: (212) 872-1011; Fax: (212) 872-1002

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GULET MOHAMED, *Plaintiff*, v. ERIC H. HOLDER, JR., *et al*., *Defendants*.	Case No. 1:11-CV-00050

Exhibit 3
Defendants' Motion to Stay

Case Management Order (Oct. 3, 2014), ECF No. 152,
Latif v. Holder, Case 3:10-cv-0750 (D. Or.)

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, 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.	3:10-cv-00750-BR CASE-MANAGEMENT ORDER

BROWN, Judge.

Having fully considered the parties' respective case-management proposals (#148) following the Court's June 24, 2014, Opinion and Order (#136) and having conducted a Rule 16 Case Management Conference with counsel on October 3, 2014, the Court, in the exercise of its case-management discretion, issues this Case-Management Order.

The Court notes the importance, complexity, and sensitivity of the issues raised and the remedies to be implemented in this matter preclude proceeding with undue haste. Nevertheless, in light of the fact that each Plaintiff has presumably been prevented from flying internationally and otherwise over United States airspace during the four years this matter has been pending, the Court concludes the time has come to resolve the claims of each Plaintiff on an individualized basis as soon as practicable. Accordingly, in the exercise of its discretion, the Court fashions the following schedule to address such individual claims expeditiously while allowing time for Defendants to make system-wide changes in due course to its DHS TRIP processes, which, the Court emphasizes, are beyond the reach of this particular litigation:

1. The Court concludes a remand of this matter is unnecessary to permit Defendants to reconsider each Plaintiff's individualized DHS TRIP redress inquiries under re-formulated

procedures compliant with this Court's Opinion and Order of June 24, 2014. Accordingly, the Court directs Defendants to make and to complete such individualized reconsideration as soon as practicable and within the timelines ordered herein.

2. No later than **October 10, 2014**, Defendant shall identify to the Court and Plaintiffs which Plaintiffs, if any, will not be precluded as of that date from boarding a commercial aircraft flying over United States airspace. In light of each Plaintiff's allegations that each has previously been denied boarding such flights (because of inclusion on the No-Fly List) as well as the fact that any Plaintiff who will not be precluded on that basis as of October 10, 2014, may have no other justiciable claims in this action, the Court concludes it is not necessary to issue a protective order as to this required disclosure.

3. Although the Court agrees Defendants require some time to reconsider any remaining Plaintiffs' DHS TRIP redress inquiries under constitutionally-sufficient procedures, Defendants shall, no later than **November 14, 2014**, complete an interim substantive review of the grounds for precluding all remaining Plaintiffs from flying over United States airspace in order to determine whether any additional Plaintiffs may thereafter be permitted to board such aircraft. If at any time Defendants determine any Plaintiff is presently eligible to do

so, Defendants shall immediately notify the Court and Plaintiffs of such status.

4. If Defendants determine after the interim substantive review of a Plaintiff's status that such Plaintiff is not presently eligible to fly over United States airspace, Defendants shall promptly and consistent with the Court's Opinion and Order of June 24, 2014:

(a) give such Plaintiff notice of that determination;

(b) give such Plaintiff an explanation of the reasons for that determination sufficient to permit the Plaintiff to provide Defendants relevant information responsive to such reasons; and

(c) consider any such responsive information provided before completing the substantive reconsideration of such Plaintiff's DHS TRIP redress inquiry as ordered herein.

5. No later than **December 19, 2014**, Defendants shall file a Status Report updating the Court and Plaintiffs of Defendants' progress in reconsidering each remaining Plaintiff's DHS TRIP applications.

6. No later than **January 16, 2015**, Defendants shall have completed their final substantive reconsideration of all remaining Plaintiffs' DHS TRIP redress inquiries pursuant to procedures fully compliant with the Court's June 24, 2014, Opinion and Order, and Paragraph 4 above. Defendants shall file a Status Report as of that date detailing the procedures and

standards employed in each reconsideration and informing the Court and Plaintiffs of the final result of Defendants' reconsideration of the remaining Plaintiffs' DHS TRIP redress inquiries.

7. Although this Order expresses firm deadlines and the Court does not intend to grant any extension absent a compelling showing that highly extraordinary intervening circumstances make compliance with this Order impossible, the Court will consider any requested extension of time that follows full conferral among the parties.

8. Because it is likely there will be claims remaining for adjudication in this Court on completion of Defendants' reconsideration of the remaining Plaintiffs' DHS TRIP redress inquiries, the parties shall submit a Joint Status Report no later than **January 31, 2015,** informing the Court of their proposed process and schedule for adjudicating those remaining claims. In the meantime the Court will not consider any substantive motions on the merits of Plaintiffs' claims and the Court expects the parties not to engage in ordinary discovery, but any party may request an interim status conference with and direction from the Court when good cause exists.

9. Although the Court does not intend to issue a general order requiring Defendants to permit Plaintiffs to fly over United States airspace during the continued pendency of these

proceedings, if a Plaintiff is presented with extraordinary circumstances that necessitate such travel (such as the death or critical illness of an immediate family member), that Plaintiff shall confer and attempt to reach an agreement with Defendants for a one-time waiver permitting the Plaintiff to complete such necessary travel. If that Plaintiff and Defendants are unable to reach an agreement, the Plaintiff may petition the Court for such relief, and Defendants will be permitted to respond accordingly. As noted, however, the Court will consider such trip-specific relief only in the most extraordinary circumstances.

10. The Court expects the parties to make all filings on the public docket. If, however, a filing contains information that must be submitted under seal or if circumstances arise in which a party must file a document *ex parte*, that party shall file a corresponding document on the public docket noting and, to the extent possible, substantively summarizing such submission for the public record.

IT IS SO ORDERED.

DATED this 6th day of October, 2014.

ANNA J. BROWN
United States District Judge