No. 22-1178

IN THE

Supreme Court of the United States

FEDERAL BUREAU OF INVESTIGATION, ET AL.,

Petitioners,

—v.—

YONAS FIKRE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU FOUNDATION OF OREGON AS *AMICI CURIAE* SUPPORTING RESPONDENT

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INTEREST OF THE AMICI CURIAE[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly 2 million members and supporters dedicated to the principles of liberty and equality embedded in the United States Constitution. The ACLU of Oregon is one of the ACLU's state affiliates. The ACLU has appeared in myriad cases before this Court, both as merits counsel and as an amicus curiae, to defend constitutional rights.

Founded in 1920, the ACLU and its affiliates have long defended access to the courts and individual rights and liberties from unwarranted government intrusion in the name of national security, including in No Fly List cases. *See, e.g.*, *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010); *Clapper v. Amnesty Int'l*, 568 U.S. 398 (2013); *Fazaga v. FBI*, 595 U.S. 344 (2022); *United States v. Zubaydah*, 595 U.S. 195 (2022); *see also Kashem v. Barr*, 941 F.3d 358 (9th Cir. 2019).

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In this case, the government asks the Court to adopt an extraordinary exception to well-established precedents, which hold that a case cannot be mooted by a defendant's voluntary cessation of allegedly wrongful conduct unless the defendant makes "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation and internal quotation marks omitted). The government says that it should be able to moot a constitutional challenge to a U.S. citizen's placement on the No Fly List by making a threadbare assertion that the same problem will not recur—based on information almost entirely in the government's possession. The government insists that it cannot be expected to say more because of the national security-predicated secrecy surrounding its No Fly List program.

But the government can say more. This Court's caselaw requires it, and national security considerations do not preclude it. In fact, the secretive nature of the No Fly List—a regulatory black box—provides more of a reason to follow existing mootness principles, not less. That is because the manner in which the government administers the No Fly List gives it unbridled discretion to decide whether to place and maintain a U.S. citizen on the List—subjecting them to serious intrusions on personal liberty—or remove them from it.

The lawfulness of the government's No-Fly-List placement and redress process are not before the Court in this case. But to understand the mootness issue at stake, it is necessary to consider the discretion the

government wields at each stage which, coupled with the secrecy it asserts in making its decisions, currently sap any post-litigation promise of non-recurrence. In deciding whether to place or maintain an individual on the No Fly List, the government uses vague criteria and a low evidentiary standard (below even the Fourth Amendment "reasonable suspicion" standard) for what is a potentially indefinite ban on the right to travel. The government keeps its reasons and evidence for placement entirely or almost entirely secret. Similarly, the government's redress process is designed to give it maximum discretion—exercised in a black box—and the government's reasons and evidence for removing the citizen are also entirely or almost entirely secret.

Because of that secrecy, if a plaintiff files an action to challenge their placement on the No Fly List, and the government takes the plaintiff off the List during the pendency of the action, there is no way for a plaintiff to know whether there is any permanence in the government's promise of removal from the No Fly List.[2] Thus, the terse statement that a plaintiff is no longer on the List and will not be returned to it "based on currently available information"—the assurance that respondent received here—is not enough to satisfy the Court's demanding standard on mootness.

Moreover, the "heavy burden" on defendants imposed by this Court's voluntary cessation caselaw exists to guard against gamesmanship. *United States*

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[2] Challenges to No-Fly-List placement have been brought in district court, as well as through petitions under 49 U.S.C. § 46110, which are reviewed by a court of appeals in the first instance. *See, e.g.*, *Moharam v. FBI*, No. 21-cv-2607 (D.D.C.); *Moharam v. TSA*, No. 22-1184 (D.C. Cir.). For ease of reference, we refer to all challengers of No-Fly-List placement as "plaintiffs."

v. W.T. Grant Co., 345 U.S. 629, 633 (1953). The government's track record in No Fly List cases has demonstrated just what the doctrine prohibits: a pattern in which the government strategically and methodically averts judicial review by taking individual plaintiffs off the No Fly List, declaring the plaintiffs' cases effectively over, and leaving unanswered serious questions about if and how the program will be applied to those plaintiffs in the future. But being told that a plaintiff is not on the List, and is not expected to be "based on currently available information," is not the same thing as a commitment that the plaintiff will not end up back on the List for the same or materially the same reasons as before—which is what the voluntary cessation doctrine requires.

This Court has never extended special solicitude to the government on issues of mootness. It should not start now, even in a case where the government asserts a national security interest. If the government is to be afforded any deference at all on national security issues, it should be in a court's evaluation of the merits. But on mootness—an Article III question within the judiciary's core competence to decide—the government should meet the same test as every other litigant. It fails to do so here, and thus, the judgment of the court of appeals should be affirmed.

ARGUMENT

I. The government's process for placing individuals on the No Fly List or removing them from it functions in a black box.

Before September 11, 2001, the government watchlisted a very small number of individuals it believed

posed a danger to aviation safety.[3] In 2003, President George W. Bush issued a directive to consolidate the government's approach to terrorism screening, and Attorney General John Ashcroft established what is now called the Threat Screening Center ("TSC") for this purpose.[4] The TSC, which is administered by the FBI, develops and maintains the federal government's Terrorist Screening Dataset ("TSDS"). The TSDS has several subsets, including the No Fly List, placement on which results in a potentially indefinite prohibition against boarding a U.S. commercial aircraft or from flying to, from, within, or over U.S. airspace.

While the government rarely releases numbers of people on the No Fly List, the little (and outdated) information that is publicly available reveals that the List has ballooned considerably in the last two decades. In 2001, the U.S. government reportedly banned fewer than 20 people from flying. By June 2016, the number of individuals on the No Fly List grew to 81,000; about 1,000 of whom were U.S. citizens or lawful permanent residents ("U.S. persons").[5]

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[3] Am. Civil Liberties Union, "Fact Sheet: Federal Watchlists" (Nov. 10, 2004), https://bit.ly/2MdJZVF.

[4] Homeland Security Presidential Directive—6, Integration and Use of Information to Protect Against Terrorism, 39 Weekly Comp. Pres. Doc. 1234 (Sept. 16, 2003); (creating the "Terrorist Screening Center"); Criminal Justice Information Services Division, National Crime Information Center (NCIC) Technical and Operational Update (TOU) 21-3, FBI, at § 2.1 (June 11, 2021), https://isp.idaho.gov/bci/wp-content/uploads/sites/3/2021/06/TOU-21-3.pdf (renaming it the Threat Screening Center).

[5] Sara Kehaulani Goo, *Faulty 'No-Fly' System Detailed* (Wash. Post Oct. 9, 2004), https://www.washingtonpost.com/archive/politics/2004/10/09/faulty-no-fly-system-detailed/2ec7e66c-6688-4985-b038-e378ae0caca0/; *see Mikulski Speaks on Senate Floor*

Neither the government's process for adding individuals to the List nor for removing them from it has been codified or subjected to notice-and comment rulemaking.

A. Individuals are added to the No Fly List at the government's discretion, with almost no transparency as to when or why it occurs.

The government exercises virtually unfettered discretion in deciding whom to place on the No Fly List. Two government entities are primarily responsible for "nominating" individuals for placement on the No Fly List: (1) the National Counterterrorism Center, which processes nominations of "known and suspected international terrorists" and (2) the FBI, which submits nominations of "known and suspected domestic terrorists" directly to the TSC.

The TSC reviews the nominations and makes the final decision on whether a nominated individual meets the requirements for placement on the No Fly List. If the TSC accepts a nomination, the TSC creates a record in the TSDS for that individual and determines the subset lists (*i.e.*, No Fly or other lists) on which the record will be placed.[6]

Calling for Action to Pass Bipartisan Collins Bill to Keep Guns Out of the Hands of Suspected Terrorists, S. Comm. on Approps. (June 23, 2016), https://www.appropriations.senate.gov/news/minority/mikulski-speaks-on-senate-floor-calling-for-action-to-pass-bipartisan-collins-bill-to-keep-guns-out-of-the-hands-of-suspected-terrorists.

[6] *See* Overview of the U.S. Government's Watchlisting Process and Procedures at 2, *Elhady v. Kable*, No. 16-cv-375 (E.D. Va. Mar. 12, 2019), ECF No. 308-12 ("Watchlisting Overview"); *see also* Overview of the U.S. Government's Watchlisting Process and Proce-

The "full extent" of how and why individuals are placed on the TSDS has "never been publicly revealed."[7] According to the TSC, an individual's placement on the No Fly List must be based on a "reasonable suspicion" that an individual poses a threat of one of the following: (1) committing an act of international or domestic terrorism with respect to an aircraft; (2) committing an act of domestic terrorism; (3) committing an act of international terrorism against any U.S. government facility abroad and associated or supporting personnel, such as embassies and military installations; or (4) engaging in or conducting a violent act of terrorism and being operationally capable of doing so.[8]

The No-Fly-List placement criteria do not provide much guidance about the kind of conduct that constitutes a "threat," let alone "reasonable suspicion" of a "threat." "Reasonable suspicion" has been vaguely defined as "articulable intelligence or information which, based on the totality of the circumstances and, taken together with rational inferences from those facts, creates a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage, in conduct constituting in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities."[9] The government's Watchlisting Guidance "has further defined or elucidated on … the criteria for placement on the No Fly List," but this Guidance is

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dures at 4, *Moharam v. FBI*, No. 21-cv-02607 (D.D.C. Jan. 18, 2022), ECF No. 20-5 (latest available version).

[7] Declaration of Timothy P. Groh, TSC Deputy Director of Operations ("Groh Decl."), *Elhady v. Kable*, No. 16-cv-375 (E.D. Va. Mar. 12, 2019), ECF No. 308-24¶ 31.

[8] Watchlisting Overview at 5.

[9] Watchlisting Overview at 4.

"disseminated solely within the U.S. Government watchlisting and screening communities." Joint Combined Statement of Agreed Facts Relevant to All Plaintiffs ¶ 6, *Latif v. Holder*, No. 10-cv-750 (D. Or. Mar. 13, 2015), ECF No. 173. As a result, the public does not have a complete picture of what makes an individual a candidate for the No Fly List in the government's view; rather, it has only the vague contours of the terms used to determine who goes on the List, and the government may change the criteria without public input or even public disclosure. *Id.*

This "reasonable suspicion" standard is even lower than the Fourth Amendment reasonable suspicion standard, which requires an officer to have reasonable, particularized suspicion that an individual "has committed or is about to commit a crime," to justify a brief investigatory stop. *Florida v. Royer*, 460 U.S. 491, 498 (1983) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). In contrast, "reasonable suspicion" for purposes of the No Fly List includes compounding layers of vagueness (a "threat" that a person "intends to" engage in activity that "is related" to terrorism), and leads to an indefinite deprivation of a liberty interest. Indeed, the government has made plain that the threshold is very low for a potential lifetime ban on the right to travel. "[C]oncrete facts are not necessary,"[10] and uncorroborated and even doubtfully reliable information is enough to land an individual on the watchlist. Placement on a watchlist does not require "any evidence that the person engaged in criminal activity, committed a crime, or will commit a crime in the future." *El-*

[10] National Counterterrorism Center, Watchlisting Guidance (2013) at 70, https://bit.ly/3djQDWj ("2013 Watchlisting Guidance").

hady v. Kable, 391 F. Supp. 3d 562, 569 (E.D. Va. 2019), *rev'd and remanded*, 993 F.3d 208 (4th Cir. 2021) (internal quotation marks omitted). Something as innocuous as "an individual's travel history" or course of "study of Arabic" suffices to support a nomination onto the No Fly List. *Id.*

Amorphous, shifting standards and a low bar for placement increase the likelihood that the No Fly List includes people who are entirely innocent of past, present, and future criminal wrongdoing. Indeed, as the history of litigation over the No Fly List suggests, the government can and does get it wrong on placement. The government has acknowledged that, for people placed on the No Fly List as "suspects," it is engaging in a predictive exercise—that someone who has not been accused of or charged with a crime *might* engage in terrorist activity. That predictive exercise, however, fails to "guard against a high risk of error." *Kashem*, 941 F.3d at 380 n.11 (describing expert testimony offered by plaintiffs). And there is no reliable guarantee that errors will not be repeated.

B. The process for removing individuals from the No Fly List is just as opaque and discretionary as the process for placement on the List.

Congress instructed the TSA Administrator to establish "a timely and fair process" for individuals identified as a potential security threat to appeal that determination. 49 U.S.C. § 44903(j)(2)(G)(i). In response, the Department of Homeland Security created the Traveler Redress Inquiry Program ("DHS TRIP"), a program intended to address errors with the No Fly List and other screening programs. But DHS TRIP is just as secretive as the process for being put on the No

Fly List in the first place—and for that reason, does not guarantee meaningful, lasting relief.

Up until 2015, the process for seeking review through DHS TRIP yielded no information. If you were denied boarding at an airport, you would apply for redress to DHS TRIP, which would forward the inquiry to TSC, which determined whether you would remain on the No Fly List. *Kashem*, 941 F.3d at 366. Following TSC's determination, DHS TRIP would send you a letter stating that the review process was complete. *Id.* DHS TRIP would not confirm or deny whether you were on the No Fly List in the first place, whether you remained on the List, why you may have been on the List in the first place, or whether you might be able to travel in the future. *Id.*

After a district court held that this redress process violated the Due Process Clause and the Administrative Procedure Act, *Latif v. Holder*, 28 F. Supp. 3d 1134, 1161–62 (D. Or. 2014), the government instituted a revised process for U.S. citizens and permanent residents.

The revised redress process now involves three stages. First, a U.S. person who is denied boarding at the airport, and applies for redress through DHS TRIP, will be informed of their No Fly List status, with the option to receive more information. If you are on the No Fly List and request more information, at the second stage, you will receive a response letter stating the criteria that are the basis for your placement on the List. The letter may, depending on "the national security and law enforcement interests at stake," include an unclassified summary of information supporting your placement on the List. *Kashem*, 941 F.3d at 366. You may then seek further review and submit any fur-

ther information you believe is relevant to the government's determination. TSC reviews this information and provides DHS TRIP (and in turn the TSA Administrator) with a recommendation as to whether you should be removed from the List or not.

At the third stage, the TSA Administrator provides you with a written final determination. If you remain on the List, the government *may* say why, but only "to the extent permitted by national security and law enforcement interests." *Id.*

The government began applying these modified procedures to plaintiffs who challenged the letters they received under the initial redress scheme. For example, in *Latif/Kashem*, the lawsuit that required the government to reform the DHS TRIP redress process, seven of the 13 plaintiffs were informed that, based on the revised process, they were "not currently on the No Fly List."[11] For the remaining plaintiffs, the government continued its practice of providing little to no explanation or evidence as to why they were on the No Fly List.

Although litigation over the No Fly List has shed some light as to how the government administers the redress process, the government's reasons and procedures for taking someone *off* the No Fly List are still just as opaque as the reasons and process for *adding* someone to the List. The redress process is not codified and remains subject to change at all times.

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[11] *See* Appendix (Salah Ali Ahmed, Nagib Ali Ghaleb, Ayman Latif, Ibraheim Mashal, Elias Mustafa Mohamed, Abdullatif Muthanna, Mashaal Rana).

C. Placement on the No Fly List can have devastating personal and professional consequences.

U.S. citizens placed on the No Fly List "have suffered significantly[,] including long-term separation from spouses and children; the inability to access desired medical and prenatal care; the inability to pursue an education of their choosing; the inability to participate in important religious rites; loss of employment opportunities; loss of government entitlements; the inability to visit family; and the inability to attend important personal and family events, such as graduations, weddings, and funerals." *Kashem*, 941 F.3d at 378 (citing one of the district court's prior decisions in the case, *Latif*, 28 F. Supp. 3d at 1149-50). Because TSDS records are shared widely with law enforcement agencies throughout the U.S. and beyond, placement on the No Fly List also increases the likelihood that a person might be subjected to an unlawful search, seizure, and/or surveillance, all because of a possibly dubious "reasonable suspicion."[12]

The experiences of amici's clients make clear that the consequences of placement on the No Fly List can continue even after people are removed from it, and include retention on one of the other TSDS sublists, inability to open or maintain bank accounts, denial of gov-

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[12] Groh Decl. ¶¶ 46-48; *see also* Declaration of Amir Meshal, *Latif v. Lynch*, No. 10-cv-00750 (D. Or. Aug. 7, 2015), ECF No. 270, at 4-8 (because of No-Fly-List placement, individual was targeted for lengthy police stops during which officers unlawfully searched his vehicle and person, and also searched his family members, leaving the individual and his wife "scared and humiliated."); *Meshal v. Wright*, 651 F. Supp. 3d 1273 (S.D. Ga. 2022).

ernment licenses or employment, and indefinite delays or denials of immigration benefits.

II. Under the government's current program, an incorrectly listed individual has no lasting assurance against wrongful placement on the List again.

Because the government's reasons and process for placing people on or removing them from the No Fly List operate in near-total secrecy, even individuals who are removed from the List lack any meaningful assurance that the government will not return them to the No Fly List for materially the same reasons that they were included in the first place. All these individuals may know is whether they are on or off the List—the reasons for a particular individual's placement remain a secret, and the possibility of the individual's relisting lies entirely within government discretion.

A. The government's record in No Fly List cases does not provide assurance that a No Fly List listee will not end up back on the List for the same reasons as before.

To assess the adequacy of the government's current redress process—and whether it provides adequate assurance against recurrence—amici have identified at least 40 U.S. persons who sought redress for alleged placement on the No Fly List, and filed lawsuits challenging their placement.[13] The public record shows that the government keeps secret the full reasons (and

[13] Our review was limited only to U.S. persons (citizens or lawful permanent residents) who challenged their placement on the No Fly List and sought redress through the post-2015 revised DHS TRIP process. *See* Appendix for individuals and cases.

in some instances, *any* reason) for placing any of these 40 people on the List—including in litigation.[14] Without that information, there is no permanence to a delisting decision—*i.e.*, that individual may end up back on the No Fly List for the same or materially the same reasons—unless either a court orders more reassurance or the government provides it.

Of these 40 U.S. persons who engaged in litigation over their placement on the No Fly List, 28—i.e., 70%—received confirmation that they were removed from the List during litigation.[15] For at least 21 of the 28, the government provided this confirmation early on in the process, *i.e.*, before the individual received even a terse summary of reasons for their placement on the

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[14] In 21 cases, the government's statement arguably did not affirmatively confirm (or has not yet confirmed) that it placed a plaintiff on the No Fly List—which would leave individuals in the limbo that existed before the *Latif* decision in 2015. *See* Appendix (Salah Ali Ahmed, Jameel Algibhah, John Doe (*Elhady*), John Doe (*Jardaneh*), Ausama Elhuzayel, Nagib Ali Ghaleb, Yaseen Kadura, Ayman Latif, Kamran Majeed, Ibraheim Mashal, Michael Migliore, Mahad Mohallim, Elias Mustafa Mohamed, Saeb Mokdad, Abdullatif Muthanna, Mashaal Rana, Awais Sajjad, Hashem Sehwail, Naveed Shinwari, Muhammad Tanvir, and Donald Thomas).

[15] These 28 individuals are Salah Ali Ahmed, Jameel Algibhah, Zijad Bosnic, Ahmad Chebli, John Doe (*Elhady*), John Doe (*Jardaneh*), Ausama Elhuzayel, Yonas Fikre, Nagib Ali Ghaleb, Yaseen Kadura, Adis Kovac, Ayman Latif, Saadiq Long, Ashraf Maniar, Ibraheim Mashal, Mahad Mohallim, Elias Mustafa Mohamed, Saeb Mokdad, Abdullatif Muthanna, Mashaal Rana, Awais Sajjad, Hashem Sehwail, Umaima Shaikh, Naveed Shinwari, Hassan Shirwa, Muhammad Tanvir, Jamal Tarhuni, and Donald Thomas. *See* Appendix.

List.[16] In other words, they were given no explanation at all, other than being told that they were not on the List.

Even in the few instances where the government has provided any information about its listing decision at all, the information provided is far from enough to provide assurance that the individual will not be added to the List again for the same reasons as before. Five of the 28 individuals removed from the No Fly List during litigation—including respondent—received unclassified summaries (sometimes consisting of only a sentence or a brief paragraph) of some of the reasons for their placement on the List and/or a final determination from TSA maintaining them on the List, only to then be removed during litigation.[17] For example, the government informed Saadiq Long that he was on the List in part because he "participated in a training."[18] But Mr. Long participated in many trainings—he was an 11-year veteran of the U.S. Air Force,[19] and also trained in the Arabic language and in religious stud-

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[16] *See* Appendix (Salah Ali Ahmed, Jameel Algibhah, Zijad Bosnic, Ahmad Chebli, John Doe (*Elhady*), John Doe (*Jardaneh*), Ausama Elhuzayel, Nagib Ali Ghaleb, Yaseen Kadura, Adis Kovac, Ayman Latif, Ibraheim Mashal, Elias Mustafa Mohamed, Saeb Mokdad, Abdullatif Muthanna, Mashaal Rana, Awais Sajjad, Naveed Shinwari, Hassan Shirwa, Muhammad Tanvir, and Donald Thomas).

[17] *See* Ashraf Maniar, Umaima Shaikh, and Jamal Tarhuni in the Appendix (unclassified summary); Yonas Fikre and Saadiq Long in the Appendix (unclassified summary and final determination).

[18] Aug. 15, 2018 TRIP Letter, *Long v. Lynch*, No. 15-cv-1642 (E.D. Va. Oct. 15, 2019), ECF No. 46-1, PageID # 751.

[19] Am. Compl., *Long v. Lynch*, No. 15-cv-1642 (E.D. Va. Aug. 15, 2018), ECF No. 35 ¶ 193.

ies.[20] DHS TRIP never provided even a hint as to which of the many trainings resulted in Mr. Long's initial placement on the List.[21] While Mr. Long was eventually taken off the List, he was given no assurance other than that he would "not be placed back on the No Fly List based on the currently available information," with no inkling of what information was "currently available" to the government. *Long v. Pekoske*, 38 F.4th 417, 422 (4th Cir. 2022). That assurance, the Fourth Circuit concluded, was enough to render Mr. Long's case moot.

B. The government has systematically used terse assertions of No Fly List status to moot litigation.

Mr. Long's case is just one instance in a larger pattern of government efforts to avoid judicial review through jurisdictional manipulation. Since revising its redress procedures in 2015, the government has methodically attempted to moot litigation by removing the plaintiff from the No Fly List while litigation is ongoing.

In most of these cases, the plaintiffs did not even get the threadbare assurance that respondent received in the form of the Courtright Declaration—that the plaintiff would not be put back on the List based on "currently available information." In 20 of the 28 in-

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[20] Oct. 14, 2018 CAIR Letter to DHS TRIP, *Long v. Lynch*, No. 15-cv-1642 (E.D. Va. Oct. 15, 2019), ECF No. 46-1, PageID # 755.

[21] *E.g.*, Apr. 23, 2019 Final Determination Letter from Patricia F.S. Cogswell, TSA Acting Deputy Administrator, *Long v. Lynch*, No. 15-cv-1642 (E.D. Va. Oct. 15, 2019), ECF No. 46-1, Page ID # 758 (conclusory final determination that Mr. Long was "properly included on" the No Fly List).

stances in which the government attempted to moot the No Fly List-related claims, seven plaintiffs were simply told that they were "not currently on the No Fly List,"[22] one was told he was "no longer on the No Fly List,"[23] and 11 were told that "the U.S. Government knows of no reason" that they "should be unable to fly."[24] The remaining nine, including respondent, were told that they would not be re-listed based on "currently available information"—which still leaves them in the dark as to whether they might be re-listed in the future, even if there is no material change as to their circumstances.[25]

The government often acts to remove a plaintiff from the No Fly List just prior to a court-imposed deadline or while awaiting a pending court ruling. In nine cases, the government issued a notice indicating that the plaintiff was no longer on the No Fly List after the district court ordered the government to indicate the

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[22] *See* Salah Ali Ahmed, Nagib Ali Ghaleb, Ayman Latif, Ibraheim Mashal, Elias Mustafa Mohamed, Abdullatif Muthanna, and Mashaal Rana in the Appendix.

[23] *See* Zijad Bosnic in the Appendix. A declaration filed two-and-a-half years after he received the notice stated that he would not be relisted "in the future based on the information known to the Terrorist Screening Center at this time." Declaration of Jason V. Herring, Deputy Director of Operations of the Terrorist Screening Center ("Herring Decl."), *Jardaneh v. Barr*, No. 18-cv-2415 (D. Md. June 7, 2021), ECF No. 142-1 ¶ 8.

[24] *See* Jameel Algibhah, John Doe (*Elhady*), John Doe (*Jardaneh*), Ausama Elhuzayel, Yaseen Kadura, Mahad Mohallim, Awais Sajjad, Hashem Sehwail, Naveed Shinwari, Muhammad Tanvir, and Donald Thomas in the Appendix.

[25] *See* Ahmad Chebli, Yonas Fikre, Adis Kovac, Saadiq Long, Ashraf Maniar, Saeb Mokdad, Umaima Shaikh, Hassan Shirwa, and Jamal Tarhuni in the Appendix.

plaintiff's status with respect to the List.[26] In three cases, the government removed the plaintiff from the No Fly List just before an upcoming briefing deadline.[27] For ten plaintiffs, the government's decision to remove the plaintiff from the No Fly List came after a dispositive motion had been fully briefed and the parties were awaiting a decision.[28] In one such case, *Elhady v. Piehota*, No. 16-cv-375 (E.D. Va. Jan. 12, 2017) (Notice, ECF No. 43), the government told three of the plaintiffs shortly after its motion to dismiss had been fully briefed that it "knows of no reason, related to [the plaintiffs' inquiry] that [the plaintiffs] should be unable to fly." In deciding the motion to dismiss, the district court noted that these plaintiffs were no longer on the No Fly List, and were, in fact, "able to fly subsequently." *Elhady v. Piehota*, 303 F. Supp. 3d 453, 458 n.2 (E.D. Va. 2017). Perhaps for that reason, the district court did not address any of the plaintiffs' No Fly List claims. *Id.*

And in four cases, the government took plaintiffs off the No Fly List after losing on some aspect of the litigation.[29] In *Kovac v. Wray*, for example, after the government lost in part on a motion to dismiss, the gov-

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[26] *See* Salah Ali Ahmed, Nagib Ali Ghaleb, Ayman Latif, Ibraheim Mashal, Elias Mustafa Mohamed, Saeb Mokdad, Abdullatif Muthanna, Mashaal Rana, and Jamal Tarhuni in the Appendix.

[27] *See* Zijad Bosnic, Saadiq Long, and Hassan Shirwa in the Appendix.

[28] *See* Jameel Algibhah, John Doe (*Elhady*), Ausama Elhuzayel, Yonas Fikre, Ashraf Maniar, Awais Sajjad, Umaima Shaikh, Naveed Shinwari, Muhammad Tanvir, and Donald Thomas in the Appendix.

[29] *See* John Doe (*Jardaneh*), Adis Kovac, Mahad Mohallim, and Hashem Sehwail in the Appendix.

ernment chose to take the plaintiff off the No Fly List instead of proceeding to discovery, and successfully moved to dismiss the plaintiff's No Fly List claims on mootness grounds. 449 F. Supp. 3d 649, 656 (N.D. Tex. 2020). Like several other plaintiffs who were removed from the No Fly List during litigation, the plaintiff in *Kovac* was told only that he "will not be placed back on the No Fly List based on currently available information." *Id.* at 655.

Cases like *Kovac* reveal a pattern in how the government litigates No Fly List cases after modifying its say-nothing DHS TRIP redress process in 2015. The pattern goes like this: When a plaintiff sues to challenge placement on the List, the government removes the plaintiff from the List and seeks to moot the case before a court has a chance to definitively weigh in on the merits of the plaintiff's challenge. And the government is often successful, even though it provides the thinnest of explanations to the reviewing court—explanations that, as explained below, would not satisfy mootness-by-voluntary-cessation requirements in any other type of case, even one involving the government.[30]

[30] Of the 28 plaintiffs removed by the government from the No Fly List during litigation to date, *none* has had the constitutionality of their initial placement adjudicated on the merits. *See* Appendix. Of the 12 plaintiffs who remained on the List, only one had her placement reviewed on the merits. *See* Julienne Busic. The challenges brought by the remaining 11 plaintiffs are either ongoing, were voluntarily dismissed, or were disposed of on other grounds. *See* Appendix.

III. Voluntary cessation requires a defendant to do more than provide a conclusory assertion that "based on currently available information," it will not re-engage in the complained-of conduct.

More than 40 years ago, this Court observed: "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice," *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982), "especially where abandonment seems timed to anticipate suit, and there is a probability of resumption." *United States v. Or. State Med. Soc'y*, 343 U.S. 326, 333 (1952).

If a defendant seeks to moot a case by voluntary ceasing its conduct, it must satisfy a "stringent" test, *City of Mesquite*, 455 U.S. at 289 n.10, under which the defendant must show that "subsequent events [have] made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189-90 (citation and internal quotation marks omitted). This is a "heavy" and "formidable" burden, *id.*, one that cannot be met with "halfhearted effort[s]," *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 92 (2013).

The burden of establishing voluntary cessation is a "heavy" one because, "[o]therwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends." *Id.* at 91. In other words, a defendant would be "free to return to his old ways" by merely "disclaim[ing] any intention to revive" problematic practices. *W.T. Grant*, 345 U.S. at 632-33.

Like any other defendant, the government has used mootness strategically in litigation, perhaps to stave off a potentially bad outcome for the government. But unlike any other defendant, the government has managed to moot claims even where it plainly does not meet the "heavy burden" that the voluntary cessation doctrine demands. It seeks to augment its ability to do so here, invoking the presumption of regularity and the trump card of national security to justify a voluntary cessation standard that does not remotely resemble the standard that this Court has applied to all defendants alike. The Court's caselaw makes plain that the government's assurance of nonaction based on "currently available information" falls well short of the demanding standard used to moot a case on voluntary cessation grounds.

A. The presumption of regularity provides no reason to deviate from established mootness principles.

This Court has made clear that there must be some degree of permanence in the government's cessation in order for the underlying case to be rendered moot—for example, a "permanent," voluntary change, *e.g.*, *City of L.A. v. Lyons*, 461 U.S. 95, 100-01 (1983), or a repudiation of past problematic practices, combined with some indication of the lasting quality of the repudiation, like a confirmatory track record. *E.g.*, *L.A. Cnty. v. Davis*, 440 U.S. 625, 632 (1979). Only then has this Court concluded that the likelihood of recurrence is sufficiently low that a case can be declared moot. On the other hand, when the Court is presented with mere promises that the wrong will not happen again—a promise that can be reversed with a simple exercise of government discretion—it has declined to moot a case on the basis of the public

defendant's voluntary cessation. *E.g.*, *West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022) (rejecting the government's argument that the case is moot because of EPA's representation that it "has no intention of enforcing the Clean Power Plan"); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017) (noting that an announcement that "religious organizations [could] compete for and receive … grants on the same terms as secular organizations" did not moot Free Exercise challenge to the grant program). As set forth above, there is no permanence or lasting quality to the government's representation that a challenging plaintiff will not be put back on the No Fly List "based on currently available information."

The government apparently recognizes that it has failed to meet this Court's ordinary requirements for mootness, as it seeks to water down the voluntary cessation doctrine using the presumption of regularity. As an initial matter, this Court has never extended the government special solicitude on questions of mootness. To the contrary, public defendants like the government have been regularly subjected to the same standards of mootness as private defendants, with nary a word on deference or leeway. *E.g.*, *West Virginia*, 142 S. Ct. at 2607; *L.A. Cnty.*, 440 U.S. at 632; *see also Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 224 (2000) (in a case against a government defendant, observing that "mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection it sought").

The government nevertheless asks (at 18-19) for an application of the presumption of regularity in determining mootness, arguing that "absent admissions … of an intent to resume the challenged

conduct," the government should be *presumed* to be "act[ing] in good faith when ceasing that conduct." Indeed, several courts of appeals have extended the presumption in deeming cases moot, without providing much reasoning. *E.g.*, *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009) ("[G]overnment actors … are accorded a presumption of good faith because they are public servants, not self-interested private parties."); *Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (7th Cir. 1988) ("[C]essation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties.").

Even if there is a place for the presumption of regularity in the mootness analysis, the cases that the government cites do not support application of the presumption here. As respondent explains (at 33-34), all of the cases cited by the government involve a corrective action as to the policies, practices, or pattern of conduct giving rise to the plaintiff's injury.[31] In other words, solicitude has been granted to government defendants only where they have undertaken *systemic* change that gives the plaintiff some assurance that they will not be at risk of a repeat injury in the future. Here, the government has indicated no intention of changing its No Fly List program.

Therefore, when the government merely attempts to moot the claim of an individual challenger—with the responsible policy remaining *un*-reformed—there is no

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[31] *E.g.*, *Sossamon*, 560 F.3d at 325 ("formally announced changes to official governmental policy"); *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010) ("[t]he government's change of policy"); *Ragsdale*, 841 F.2d at 1365-66 (new "public policy of non-enforcement").

reason to apply a presumption of regularity, as such a "halfhearted effort" does not convey that the government "could not reasonably be expected to resume" its problematic behavior. *Already*, 568 U.S. at 92 (citation and internal quotation marks omitted). This is particularly true where the individual seeks not just individual relief (*i.e.*, removal from the No Fly List) but also seeks some reform as to the broader policy that led to the plaintiff's adversity in the first place. *E.g.*, *Ammex, Inc. v. Cox*, 351 F.3d 697, 705 (6th Cir. 2003) (acknowledging the solicitude given to government officials, but not applying it, given that the Michigan Attorney General's voluntary action was to withdraw enforcement action, which did not "make it absolutely clear that the enforcement action is not reasonably likely to recur").

Moreover, the voluntary cessation doctrine exists to prevent giving the defendant an unfair way to evade judicial review without giving the plaintiff meaningful relief: to prevent a defendant from returning to its old ways by allowing the defendant to "resum[e] … the challenged conduct as soon as the case is dismissed" and "insulate" a problematic practice from review. *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012). The government, like a private defendant, is just as capable of engaging in gamesmanship and returning to its old ways, avoiding review in cases where there is a strong "public interest in having the legality of the practices settled," *W.T. Grant*, 345 U.S. at 632. In fact, it has done so, and not just in No Fly List cases. *E.g.*, *ACLU of N. Cal. v. Azar*, No. 16-cv-3539, 2018 WL 4945321 (N.D. Cal. Oct. 11, 2018) (noting that a virtually identical challenge to an earlier iteration of a funding program had previously been deemed moot). That track record

counsels against, not for, giving the government unparalleled deference in determining mootness.

B. The government's national security interests do not justify the application of a new voluntary cessation test that would shift the burden from defendants to plaintiffs.

The existing mootness and voluntary cessation doctrines adequately serve their purpose of assessing whether the government's conduct warrants termination of the case. There is no need to fashion new, special rules to accommodate the government's national security interests. Indeed, this Court's "precedents, old and new, make clear that concerns of national security and foreign relations do not warrant abdication of the judicial role." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

This Court has noted repeatedly that "national-security concerns must not become a talisman used to ward off inconvenient claims—a 'label' used to 'cover a multitude of sins.'" *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 523 (1985)). "This 'danger of abuse' is even more heightened given 'the difficulty of defining' the 'security interest' in domestic cases." *Id.* (quoting *Mitchell*, 472 U.S. at 523).

The government already receives considerable deference when claims implicating national security interests are evaluated on their merits, out of judicial reluctance "to intrude upon the authority of the Executive in military and national security affairs." *Dep't of the Navy v. Egan*, 484 U.S. 518, 530 (1988). Out of such deference, the government, for example, exercises privileges that have no analogue in private

litigation, *e.g.*, *United States v. Zubaydah*, 595 U.S. 195, 205 (2022) (state-secrets privilege cannot be overcome with "even the most compelling necessity"), and receives "respect for [its] conclusions" based on evidence collected and factual inferences drawn in national security cases, *Humanitarian Law Project*, 561 U.S. at 34. If the government defends a No Fly List case fully on the merits, it can ask for similar deference then. But one layer of deference is apparently not enough for the government; it seeks deference not only in *how* a court considers the merits, but *whether* the merits are considered at all. There is no sensible justification for this.

And the sort of deference that the government seeks on jurisdiction requires rewriting the relevant test entirely and would turn voluntary cessation on its head. Settled caselaw on voluntary cessation requires the *defendant* to make "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189. The government proposes (at 18), however, that it is the *plaintiff* who must bear the burden of *defeating* mootness in national security cases by making a "strong showing of bad faith." But the government knows that this is an impossible task given the black box in which the No Fly List operates. So, under the government's test, the government's only obligation to moot a case is to simply say, "trust us, this won't happen again based on currently available information." *See* U.S. Br. 17. That threadbare assertion would not fly in any other kind of case involving the government, *e.g.*, *West Virginia*, 142 S. Ct. at 2607, and it is inadequate here.

Indeed, when the government invokes national security interests, it is especially critical to subject its

mootness claims to ordinary, robust voluntary cessation standards. The government may not invoke national security as a blanket reservation of its right to go back to its old ways—*e.g.*, because "currently available information" might change. A desire to maintain "the latitude" to "go back to the old" ways indicates "a high likelihood of returning to" those ways without further judicial intervention. *Sasnett v. Litcher*, 197 F.3d 290, 291-92 (7th Cir. 1999), *abrogated on other grounds in Bridges v. Gilbert*, 557 F.3d 541 (7th Cir. 2009).

In challenges to government policies that are justiciable at the outset—even ones implicating national security—there is a "strong public interest in having the legality of the [government's] practices settled," *W.T. Grant*, 345 U.S. at 632, and for individuals to know how their liberties balance against the government's interests. The government "should not be able to evade judicial review" by granting piecemeal relief to each challenger, leaving intact the source of the challengers' adversity. *Cf. City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001). If the government fails to make "absolutely clear" that the source of the adversity—the problematic policy, practice, or program—will no longer be able to adversely affect the challenger, then there will always be some reasonable expectation that "the allegedly wrongful behavior" will recur. *Friends of the Earth*, 528 U.S. at 189.

C. Removing an individual from the No Fly List, with no lasting assurance that the individual will not be listed again for materially the same reasons, does not satisfy this Court's standards for mootness by voluntary cessation.

In a No Fly List case, simply saying that a plaintiff will not be returned to the List "based on currently available information" does not meet the "heavy burden" to moot a case by voluntary cessation. In any other type of case, an individual wronged by the government may have some assurance that the same problem will not arise again in the future because the government has made permanent changes to the relevant standards or ground rules, so that a plaintiff will know how he or she will be treated under those rules going forward. But that is not possible for a plaintiff who is taken off the No Fly List in response to litigation because the List operates almost entirely in secrecy. So, even if the government were to change No Fly List procedures to ensure that the plaintiff stays off the List for reasons already considered, the public would likely never know.

The government's terse assurance about "currently available information" also does not provide the sort of permanent repudiation necessary to give assurance that "there is no reasonable expectation … that the alleged violation will recur." *L.A. Cnty.*, 440 U.S. at 631 (citation and internal quotation marks omitted). In most No Fly List cases where a plaintiff has been taken off the List, the government makes no statement about recurrence at all; it simply says that the plaintiff is off the List without explanation or commitments as to future action. Where the government has made some indication of non-recurrence—*i.e.*, that the

plaintiff will not be placed on the List based on "currently available information"—when the plaintiff has little or no idea why the government (rightly or wrongly) put them on or took them off the List, the government's assertion does nothing to extinguish all "reasonable expectation … that the alleged violation will recur." With no indication of permanence in the government's assertion, a plaintiff has no lasting assurance that the government will not change its mind yet again and return the plaintiff to the List, even if nothing about the plaintiff materially changes.

The government says (at 33-34) that, "for obvious reasons, [it] cannot responsibly promise that respondent (or anybody else) will never be placed on the No Fly List in the future." To be sure, the Court's mootness precedents do not require the government to say a wrongly listed individual, now and for all time, shall never be on the No Fly List, before it can moot a case. But the government can, and must, do more to make "absolutely clear" that the problem leading to a plaintiff's suit is not reasonably likely to recur. *E.g.*, Fikre Br. 48-50. And there are measures available to the government and to a reviewing court that ensure, as part of a mootness review, sensitive information not suitable for public disclosure will be "handled responsibly." *See id.* at 46-47.

The solution is not, however, to permit the government to craft an entirely new standard—one under which a terse and reversible commitment to mitigate wrongdoing for an individual plaintiff is enough to make that plaintiff's entire case against the government moot, either because the government is the government (*i.e.*, because of the presumption of regularity), or because national security is national security. Even in a national security case, it is the

government-as-defendant's burden to show that the "allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189. In this case, and others like respondent's, the government's assurance that the plaintiff will not be exposed to the same government wrongdoing "based on currently available information" does not satisfy that standard.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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1. Salah Ali Ahmed

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Ahmed was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Salah Ali Ahmed and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The statement followed a court order to inform plaintiff whether he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

2. Jameel Algibhah

Tanvir v. Tanzin, No. 13-cv-6951 (S.D.N.Y.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Algibhah was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"[Mr. Algibhah] received a letter from the DHS TRIP Director stating, in part, 'At this time the U.S. Government knows of no reason you should be unable to fly. This determination, based on the totality of available information, closes your DHS TRIP inquiry.'"

(ECF No. 92.)

Litigation Posture at the Time of Government Statement

The government's motion to dismiss was fully briefed and pending. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 34, 73, 81.)

3. Mark Amri

Elhady v. Piehota, No. 16-cv-375 (E.D. Va.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Amri was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: No.

Government Statement Regarding No Fly List Status/Removal

"[T]he U.S. government knows of no reason, related to your inquiry, that you should be unable to fly."

(ECF Nos. 22, 54.)

Status/Resolution of No-Fly-List Claims If Not Removed

Mr. Amri was removed from the No Fly List just prior to joining the lawsuit and his No Fly List placement was not adjudicated. The court considered only his claims that were unrelated to the No Fly List.

(ECF No. 22.)

4. <u>Zijad Bosnic</u>

Bosnic v. Wray, No. 17-cv-826 (M.D. Fl.);
Jardaneh v. Barr, No. 18-cv-2415 (D. Md.)

<u>Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement</u>

None. Mr. Bosnic was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

<u>Removed from No Fly List During Lawsuit</u>: Yes.

<u>Government Statement Regarding No Fly List Status/Removal</u>

"After further review of your inquiry, we have determined that you are no longer on the No Fly List."

(*Bosnic*, ECF No. 23-1.)

<u>Litigation Posture at the Time of Government Statement</u>

DHS sent its TRIP letter less than three weeks before the original answer deadline. Defendants moved to dismiss based on Mr. Bosnic's removal from the list. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(*Bosnic*, ECF Nos. 20, 23.)

5. Julienne Busic

Busic v. TSA, No. 20-1480 (D.C. Cir.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

Ms. Busic was provided a summary of reasons for her placement on the No Fly List. The final determination noted that the TSA Administrator reviewed "other information available to me" and that the conclusions "do not constitute the entire basis of my decision but I am unable to provide additional information."

(Underlying Decision in Case, D.C. Cir. Doc. ID No. 1878590 (Jan. 5, 2021).)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

Ms. Busic's case was decided on the merits. The D.C. Circuit rejected Ms. Busic's substantive due process challenge to her placement on the No Fly List, as well as her procedural due process and APA claims.

(*Busic v. TSA*, 62 F.4th 547 (D.C. Cir. 2023).)

6. Ahmad Chebli

Chebli v. Kable, No. 21-cv-937 (D.D.C.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Chebli was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Mr. Chebli "'no longer satisfies the criteria for placement on the No Fly List' . . . he has 'been removed from the No Fly List, and will not be placed back on the No Fly List based on currently available information."

(ECF No. 4.)

Litigation Posture at the Time of Government Statement

DHS sent its TRIP letter ten days after Mr. Chebli filed his lawsuit, and more than two years after he filed his initial TRIP request seeking information about the basis for his placement. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 1.)

7. John Doe (*Elhady*)

Elhady v. Piehota, No. 16-cv-375 (E.D. Va.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. John Doe was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Counsel for plaintiff informed the court of receipt of a letter, stating that "the U.S. government knows of no reason, related to your inquiry, that you should be unable to fly."

(ECF No. 43.)

Litigation Posture at the Time of Government Statement

A motion to dismiss was fully briefed and pending; oral argument was about to be held. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 28, 31, 37, 46.)

8. John Doe (*Jardaneh*)

Jardaneh v. Barr, No. 18-cv-2415 (D. Md.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. John Doe was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"I understand that if [John Doe] were now to submit complete DHS TRIP applications based on past denials of boarding, DHS TRIP would provide [this] individual a response confirming that the U.S. Government knows of no reasons th[is] individual[] should be unable to fly."

(ECF No. 142-1.)

Litigation Posture at the Time of Government Statement

The statement was included in a notice about the government's intention to file a motion to dismiss the No Fly List-related claims, after the government's prior motion to dismiss was unsuccessful and discovery remained ongoing. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 142; *see also El Ali v. Barr*, 473 F. Supp. 3d 479 (D. Md. 2020).)

9. Ausama Elhuzayel

Elhady v. Piehota, No. 16-cv-375 (E.D. Va.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Elhauzavel was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Counsel for plaintiff informed the court of receipt of a letter stating that "the U.S. government knows of no reason, related to your inquiry, that you should be unable to fly."

(ECF No. 43.)

Litigation Posture at the Time of Government Statement

A motion to dismiss was fully briefed and pending; oral argument was about to be held. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 28, 31, 37, 46.)

10. Yonas Fikre

Fikre v. FBI, No. 13-cv-899 (D. Or.) (*Fikre I*);
Fikre v. FBI, No. 16-36072 (9th Cir.) (*Fikre II*);
Fikre v. FBI, No. 20-35904 (9th Cir.) (*Fikre III*)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

Mr. Fikre was not provided with an unclassified summary of reasons for his placement on the No Fly List when his request was reevaluated. The final determination he was provided states that "[t]his conclusion does not constitute the entire basis of [the TSA Administrator's] decision, but I am unable to provide additional information."

(*Fikre II*, ECF No. 19.)

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

First Statement: "Defendants hereby notify the Court that undersigned counsel recently was advised by the Terrorist Screening Center that Plaintiff has been removed from the No Fly List."

(*Fikre I*, ECF No. 98.)

Second Statement: "Plaintiff was placed on the No Fly List in accordance with applicable policies and procedures. Plaintiff was removed from the No Fly List upon the determination that he no longer satisfied the criteria for placement on the No Fly List. He will not be placed on the No Fly List in the future based on the currently available information."

(*Fikre I*, ECF No. 130-2.)

Litigation Posture at the Time of Government Statement

The first statement followed two unsuccessful motions to dismiss, while a third motion to dismiss was fully briefed and pending.

(*See Fikre v. FBI*, 23 F. Supp. 3d 1268 (D. Or. 2014); *Fikre v. FBI*, 142 F. Supp. 3d 1152 (D. Or. 2015); *Fikre I*, ECF Nos. 90, 95, 96.)

The second statement followed the Ninth Circuit's reversal of the district court's initial decision that Mr. Fikre's case was moot. This statement was attached to a renewed motion to dismiss.

(*Fikre v. FBI*, 904 F.3d 1033 (9th Cir. 2018); *Fikre I*, ECF No. 130.)

Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

11. Nagib Ali Ghaleb

Latif v. Holder, No. 10-cv-750
(D. Or. Oct. 3, 2014)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Ghaleb was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Nagib Ali Ghaleb and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The court ordered the government to inform plaintiff whether he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

12. Yaseen Kadura

Kadura v. Lynch, No. 14-cv-13128 (E.D. Mich.); *Elhady v. Piehota*, No. 16-cv-375 (E.D. Va.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Kadura was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Mr. Kadura's counsel received a letter stating: "As you requested in connection with Mr. Kadura's redress inquiry challenging the redress process, DHS TRIP reevaluated Mr. Kadura's redress inquiry and is now providing a new determination in accordance with the newly enhanced procedures. At this time the U.S. Government knows of no reason Mr. Kadura should be unable to fly."

(*Elhady*, ECF No. 22.)

Litigation Posture at the Time of Government Statement

The letter was sent three weeks after Mr. Kadura filed his lawsuit, and more than a year after Mr. Kadura's last communication with DHS TRIP. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(*Kadura*, ECF No. 1; *Elhady*, ECF No. 22.)

13. Mohamed Sheikh Abdirahman Kariye

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that included some but not all of its reasons for placing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF No. 184.)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

The Ninth Circuit held that the revised TRIP procedures were not vague and complied with procedural due process. The Ninth Circuit further held that it lacked jurisdiction under 49 U.S.C. § 46110 to hear plaintiffs' substantive due process claims given the revisions to the TRIP procedures.

(*Kashem v. Barr*, 941 F.3d 358, 369–90, 390–91 (9th Cir. 2019).)

14. Faisal Nabin Kashem

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that included some but not all of its reasons for placing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF Nos. 176, 176-1, 176-2, 176-3.)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

The Ninth Circuit held that the revised TRIP procedures were not vague and complied with procedural due process. The Ninth Circuit further held that it lacked jurisdiction under 49 U.S.C. § 46110 to hear plaintiffs' substantive due process claims given the revisions to the TRIP procedures.

(*Kashem v. Barr*, 941 F.3d 358, 369–90, 390–91 (9th Cir. 2019).)

15. Saad Bin Khalid

Khalid v. Garland, No. 21-cv-2307 (D.D.C.) (*Khalid I*);
Khalid v. Garland, No. 23-1150 (D.C. Cir.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided a three-sentence "unclassified summary that includes reasons supporting [Mr. Khalid's] placement;" noting that "[w]e are unable to provide additional disclosures;" and noted that the conclusions in the final order "did not constitute the entire basis of [the] decision."

(*Khalid I*, ECF No. 19-2.)

Removed from No Fly List During Lawsuit: No. This lawsuit remains pending.

Status/Resolution of No-Fly-List Claims If Not Removed

DHS TRIP issued a final determination maintaining Mr. Khalid on the No Fly List under the revised procedures. His petition for review under 49 U.S.C. § 46110 remains pending in the D.C. Circuit.

(*Khalid I*, ECF No. 19-2).

16. Raymond Earl Knaeble IV

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that included some but not all of its reasons for plac-

ing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF Nos. 177, 177-1, 177-2, 177-3)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

The Ninth Circuit held that the revised TRIP procedures were not vague and complied with procedural due process. The Ninth Circuit further held that it lacked jurisdiction under 49 U.S.C. § 46110 to hear plaintiffs' substantive due process claims given the revisions to the TRIP procedures.

(*Kashem v. Barr*, 941 F.3d 358, 369–90, 390–91 (9th Cir. 2019).)

17. Adis Kovac

Kovac v. Wray, No. 18-cv-110 (N.D. Tex.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Kovac was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"You have been removed from the No Fly List, and will not be placed back on the No Fly List based on currently available information."

(ECF No. 30-1.)

Litigation Posture at the Time of Government Statement

The government's statement followed the denial in part of its motion to dismiss. The government attached its statement to a renewed motion to dismiss. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 30; *see also Kovac v. Wray*, 363 F. Supp. 3d 721 (N.D. Tex. 2019).)

18. Ayman Latif

Latif v. Holder, No. 10-cv-750 (D. Or. Oct.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Latif was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Ayman Latif and six

others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The statement was filed after a court order to inform plaintiff if he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

19. Saadiq Long

Long v. Lynch, No. 15-cv-1642 (E.D. Va.) (*Long I*);
Long v. Pekoske, No. 20-4106 (4th Cir.) (*Long II*)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided a two-sentence "unclassified summary that included reasons supporting [Mr. Long's] placement;" noted that "[w]e are unable to provide additional disclosures;" and noted that the conclusions in the final order "did not constitute the entire basis of [the] decision."

(*Long I*, ECF No. 46-1.)

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

DHS TRIP "has recently been advised that, based on an assessment of the currently available information, you have been removed from the No Fly List and that you will not be placed back on the No Fly List based on the currently available information."

(*Long II*, ECF Nos. 27-2, 27-3.)

Litigation Posture at the Time of Government Statement

The government filed its statement confirming Mr. Long's removal a week before the government's opposition brief was due to the Fourth Circuit. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(*Long II*, ECF Nos. 21, 27-3.)

20. Kamran Majeed

Majeed v. Wray, No. 18-cv-10784 (E.D. Mich.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The record is unclear.

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

Mr. Majeed voluntarily dismissed the case.

(ECF No. 25.)

21. Ashraf Maniar

Maniar v. Wolf, No. 19-cv-3826 (D.D.C.) (*Maniar I*);
Maniar v. Nielsen, No. 18-cv-1362 (D.D.C) (*Maniar II*)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided a one-sentence "unclassified summary that includes reasons supporting [his] placement;" noted that Mr. Maniar was on the No Fly List "in part" due to those reasons; and noted that "additional details regarding your placement . . . cannot be provided to you."

(*Maniar I*, ECF No. 9-5.)

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"After further review of your inquiry, we have determined that you no longer satisfy the criteria for placement on the No Fly List. You have been removed from the No Fly List, and will not be placed back on the No Fly List based on currently available information. The change in your status was based on the totality of available information, including information you provided to DHS TRIP."

(*Maniar I*, ECF No. 23-5.)

Litigation Posture at the Time of Government Statement

Motions to dismiss were fully briefed and pending in two separate lawsuits. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(*Maniar I*, ECF Nos. 9, 12, 14; *Maniar II*, ECF Nos. 31, 32, 34.)

22. Ibraheim Mashal

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Mashal was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Ibraheim Y Mashal and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The government's statement followed a court order to inform plaintiff whether he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

23. Amir Meshal

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that included some but not all of its reasons for placing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF Nos. 178, 178-1, 178-2, 178-3.)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

The Ninth Circuit held that the revised TRIP procedures were not vague and complied with procedural due process. The Ninth Circuit further held that it lacked jurisdiction under 49 U.S.C. § 46110 to hear plaintiffs' substantive due process claims given the revisions to the TRIP procedures.

(*Kashem v. Barr*, 941 F.3d 358, 369–90, 390–91 (9th Cir. 2019).)

24. Michael Migliore

Khairullah v. Meyer, No. 23-cv-30095 (D. Mass.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

Mr. Migliore submitted a TRIP request on July 27, 2023. He had not received a response as of September 18, 2023.

(ECF No. 1.)

Removed from No Fly List During Lawsuit: No. This lawsuit remains pending.

Status/Resolution of No-Fly-List Claims If Not Removed

Mr. Migliore filed his complaint on September 18, 2023, and this case remains pending.

(ECF No. 1.)

25. Mahad Mohallim

Jardaneh v. Barr, No. 18-cv-2415 (D. Md.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The record is unclear.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Mr. Mohallim "received a letter stating that the U.S. Government knows of no reason he should be unable to fly."

(ECF No. 142-1.)

Litigation Posture at the Time of Government Statement

The government included its statement in a notice about its intention to file a motion to dismiss the No Fly List-related claims, after a prior motion to dismiss was unsuccessful, and discovery remained ongoing. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 142; *see also El Ali v. Barr*, 473 F. Supp. 3d 479 (D. Md. 2020).)

26. Fahmi Ahmed Moharam

Moharam v. FBI, No. 21-cv-02607 (D.D.C.) (*Moharam I*);
Moharam v. TSA, No. 22-1184 (D.C. Cir.) (*Moharam II*).

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided a one-sentence "unclassified summary that includes reasons supporting [his] placement;" noted that "additional details regarding your placement . . . cannot be provided to you." The final determination letter stated that the listed conclusions "do not constitute the entire basis of [the] decision."

(*Moharam I*, ECF No. 20-4; *Moharam II*, Pet. for Review, D.C. Cir. Doc. ID No. 1958969 (Aug. 5, 2022).)

Removed from No Fly List During Lawsuit: No. This lawsuit remains pending.

Status/Resolution of No-Fly-List Claims If Not Removed

DHS TRIP issued a final determination maintaining Mr. Moharam on the No Fly List under revised procedures. Mr. Moharam's petition for review under 49 U.S.C. § 46110 is pending in the D.C. Circuit.

(*Moharam I*, ECF No. 20-4; *Moharam II*, Pet. for Review, D.C. Cir. Doc. ID No. 1958969 (Aug. 5, 2022).)

27. Elias Mustafa Mohamed

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Mohamed was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Elias Mustafa Mohamed and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The government's statement followed a court order to inform plaintiff if he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

28. Saeb Mokdad

Mokdad v. Lynch, No. 13-cv-12038 (E.D. Mich.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Mokdad was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

First Statement: "At this time you are not on the No Fly List. This determination, based on the totality of information available to DHS TRIP, concludes our consideration of your redress inquiry."

(ECF No. 58.)

Second Statement.: "Plaintiff was notified in correspondence from [DHS TRIP] that he was not on the No Fly List. . . . Mr. Mokdad is not currently on the No Fly List, and he will not be placed on the No Fly

List in the future based on the currently available information."

(ECF No. 58.)

Litigation Posture at the Time of Government Statement

The first statement followed a court order to reopen Mr. Mokdad's DHS TRIP request under the revised TRIP procedures and issue a letter stating whether he was on the No Fly List.

(ECF No. 43.)

The second statement was filed in response to a court order to provide a declaration with additional details.

(ECF No. 57.)

Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

29. Abdullatif Muthanna

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Muthanna was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of

the date of this letter: [listing Abdullatif Muthanna and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The government's statement followed a court order to inform plaintiff whether he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

30. Stephen Durga Persaud

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that included some but not all of its reasons for placing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF Nos. 180, 180-1, 180-2, 180-3.)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

The Ninth Circuit held that the revised TRIP procedures were not vague and complied with procedural due process. The Ninth Circuit further held that it lacked jurisdiction under 49 U.S.C. § 46110 to hear plaintiffs' substantive due process claims given the revisions to the TRIP procedures.

(*Kashem v. Barr*, 941 F.3d 358, 369–90, 390–91 (9th Cir. 2019).)

31. Mashaal Rana

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Rana was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"Defendants hereby notify you that the following individuals are not currently on the No Fly List as of the date of this letter: [listing Mashaal Rana and six others]. At this time, apart from the information above, we make no other representations with respect to past or future travel. We have no further information to provide at this time."

(ECF No. 153-1.)

Litigation Posture at the Time of Government Statement

The government's statement followed a court order to inform plaintiff if he was on the No Fly List. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 152.)

32. Awais Sajjad

Tanvir v. Tanzin, No. 13-cv-6951 (S.D.N.Y.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Sajjad was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"[Mr. Sajjad] received a letter from the DHS TRIP Director stating, in part, 'At this time the U.S. Government knows of no reason you should be unable to fly. This determination, based on the totality of available information, closes your DHS TRIP inquiry.'"

(ECF No. 92.)

Litigation Posture at the Time of Government Statement

A motion to dismiss was fully briefed and pending. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 34, 73, 81.)

33. Hashem Sehwail

Jardaneh v. Barr, No. 18-cv-2415 (D. Md.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The record is unclear.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"I understand that if [Mr. Sehwail] were now to submit complete DHS TRIP applications based on past denials of boarding, DHS TRIP would provide [him with] a response confirming that the U.S. Government knows of no reasons [he] should be unable to fly."

(ECF No. 142-1.)

Litigation Posture at the Time of Government Statement

The statement was included in a notice about an intention to file a motion to dismiss the No Fly List-related claims, after the government's prior motion to dismiss was unsuccessful and discovery remained ongoing. Plaintiff's constitutional challenge to his No

Fly List placement was not adjudicated on the merits.

(ECF No. 142; *see also El Ali v. Barr*, 473 F. Supp. 3d 479 (D. Md. 2020).)

34. <u>Umaima Shaikh</u>

Shaikh v. Nielsen, No. 19-cv-1398, (D.D.C.);
Maniar v. Wolf, No. 19-cv-3826 (D.D.C.)

<u>Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement</u>

The government provided a one-sentence "unclassified summary that includes reasons supporting [her] placement;" the sentence noted that Ms. Shaikh was only on the No Fly List "in part" due to those reasons; and noted that "additional reasons for and details regarding your placement . . . cannot be provided to you.".

(*Maniar*, ECF No. 9-8.)

<u>Removed from No Fly List During Lawsuit</u>: Yes.

<u>Government Statement Regarding No Fly List Status/Removal</u>

"After further review of your inquiry, we have determined that you no longer satisfy the criteria for placement on the No Fly List. You have been removed from the No Fly List and will not be placed back on the No Fly List based on currently available information. The change in your status was based on the totality of available information, including information you provided to DHS TRIP."

(*Maniar*, ECF No. 16-1.)

Litigation Posture at the Time of Government Statement

A motion to dismiss was fully briefed and pending. Plaintiff's constitutional challenge to her No Fly List placement was not adjudicated on the merits.

(*Maniar*, ECF Nos. 9, 12, 14.)

35. Naveed Shinwari

Tanvir v. Tanzin, No. 13-cv-6951 (S.D.N.Y.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Shinwari was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"[Mr. Shinwari] received a letter from the DHS TRIP Director stating, in part, 'At this time the U.S. Government knows of no reason you should be unable to fly. This determination, based on the totality of available information, closes your DHS TRIP inquiry.'"

(ECF No. 92.)

Litigation Posture at the Time of Government Statement

The government's motion to dismiss was fully briefed and pending. Plaintiff's constitutional challenge to

his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 34, 73, 81.)

36. Hassan Shirwa

Jardaneh v. Barr, No. 18-cv-2415 (D. Md.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Shirwa was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"After further review of your inquiry, we have determined that you no longer satisfy the criteria for placement on the No Fly List. You have been removed from the No Fly List, and will not be placed back on the No Fly List based on currently available information."

(ECF No. 49-3.)

Litigation Posture at the Time of Government Statement

DHS sent its TRIP letter five days before the defendants' motion to dismiss deadline. Defendants moved to dismiss in part on this basis. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF No. 49.)

37. Muhammad Tanvir

Tanvir v. Tanzin, No. 13-cv-6951 (S.D.N.Y.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Tanvir was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

"[Mr. Tanvir] received a letter from the DHS TRIP Director stating, in part, 'At this time the U.S. Government knows of no reason you should be unable to fly. This determination, based on the totality of available information, closes your DHS TRIP inquiry.'"

(ECF No. 92.)

Litigation Posture at the Time of Government Statement

The government's motion to dismiss was fully briefed and pending. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 34, 73, 81.)

38. Jamal Tarhuni

Tarhuni v. Holder, No. 13-cv-001 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided a one-sentence "unclassified summary that includes reasons supporting [his] placement;" and noted that TRIP was "unable to provide additional disclosures regarding your placement on the No Fly List."

(ECF No. 82-1.)

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

First Statement: "We have been advised that you have been removed from the No Fly List. The change in your status was based on the totality of available information, including your submissions to DHS TRIP."

(ECF No. 89-2.)

Second Statement: "Plaintiff was notified in correspondence from [DHS TRIP], that he was removed from the No fly List based on the totality of available information, including his submissions to DHS TRIP. Mr. Tarhuni will not be placed back on the No Fly List based on the currently available information."

(ECF No. 98.)

Litigation Posture at the Time of Government Statement

The first statement followed a court order to review Mr. Tarhuni's status under the revised TRIP procedures.

(ECF No. 79.)

The second statement was in response to the court's request to submit additional information.

(ECF No. 98.)

Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

39. Donald Thomas

Elhady v. Piehota, No. 16-cv-375 (E.D. Va.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

None. Mr. Thomas was removed from the No Fly List before he was given an unclassified summary of reasons for his placement on the No Fly List.

Removed from No Fly List During Lawsuit: Yes.

Government Statement Regarding No Fly List Status/Removal

Counsel for plaintiff informed the court that the government sent a letter stating that "the U.S. government knows of no reason, related to your inquiry, that you should be unable to fly."

(ECF No. 43.)

Litigation Posture at the Time of Government Statement

A motion to dismiss was fully briefed and pending; oral argument was about to be held. Plaintiff's constitutional challenge to his No Fly List placement was not adjudicated on the merits.

(ECF Nos. 28, 31, 37, 46.)

40. Steven William Washburn

Latif v. Holder, No. 10-cv-750 (D. Or.)

Information Provided in DHS TRIP Process About Alleged No-Fly-List Placement

The government provided an unclassified summary that includes some but not all of its reasons for placing plaintiff on the List, and noted that "[w]e are unable to provide additional disclosures regarding your placement." The TSA Administrator's final order maintaining Plaintiff on the No Fly List stated that it "did not constitute the entire basis of my decision."

(ECF Nos. 179, 179-1, 179-2, 179-3.)

Removed from No Fly List During Lawsuit: No.

Status/Resolution of No-Fly-List Claims If Not Removed

Mr. Washburn died during the pendency of the lawsuit and his claims were dismissed as moot.

(ECF No. 337.)