

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

AYMAN LATIF, et al., <i>Plaintiffs,</i>	Case 3:10-cv-00750-BR
v. ERIC H. HOLDER, JR., et al., <i>Defendants.</i>	DECLARATION OF DEBORAH O. MOORE

I, **DEBORAH O. MOORE**, hereby declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Branch Manager of the Transportation Security Redress Branch in the Office of Civil Rights & Civil Liberties, Ombudsman and Traveler Engagement at the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS). I have held this position since June 16, 2013. As part of my official duties as Branch Manager, I serve as the Director of the DHS Traveler Redress Inquiry Program (DHS TRIP) and am responsible for its management. The statements made within this Declaration are based upon my personal knowledge and information made available to me in my official capacity.

A. DHS TRIP

2. Congress directed the Secretary of Homeland Security (Secretary) to establish a timely and fair redress process for travelers who believe they have been delayed or prohibited from boarding a commercial aircraft because they have been wrongly identified as a threat under the regimes utilized by the TSA, U.S. Customs and Border Protection (CBP), or any other office or component of DHS. *See* 49 U.S.C. § 44926(a). Congress further directed the Secretary to establish an “Office of Appeals and Redress” to implement, coordinate, and execute the redress process. *Id.* § 44926(b). This office is required to include representatives

from TSA, CBP, and such offices and components of DHS as the Secretary determines appropriate. *Id.* Additionally, Congress directed the Administrator of TSA to create a process to enable airline passengers who are delayed or prohibited from boarding a flight because TSA's "passenger prescreening system determined that they might pose a security threat to appeal such determination and correct information contained in the system" as necessary. *Id.* § 44903(j)(2)(C)(iii)(I). Congress further directed that as part of the appeal process, the TSA Administrator must maintain a record of air passengers who have been misidentified as possibly posing a security threat in order to prevent repeated delays of such passengers. *Id.* § 44903(j)(2)(G).

3. In February 2007, DHS TRIP was officially launched as the central processing point for redress inquiries. On December 10, 2007, the Secretary designated the TSA Office of Transportation Security and Redress, currently known as the Transportation Security Redress Branch, as both the lead agent to manage DHS TRIP and the statutorily-required "Office of Appeals and Redress."

4. Multiple federal agencies play a role in the regimes utilized by DHS components to identify possible threats to transportation and national security. DHS TRIP serves an important function by providing a single point of contact for a wide variety of complaints and inquiries regarding travel difficulties, such as the following: delayed or denied airline boarding; denial of entry into the United States at a port of entry; or being told that personal information on travel documents was incomplete or inaccurate. Travelers who believe that they experienced such problems because they were wrongly identified as a threat may submit a Traveler Inquiry Form to DHS TRIP. The Traveler Inquiry Form prompts travelers to describe their particular experience, produce documentation related to the subject inquiry as

necessary, provide at least one piece of government-issued photo identification documentation, and provide a contact to which a response may be directed.

5. When a traveler files an inquiry with DHS TRIP online, the system automatically provides the traveler a Redress Control Number (RCN) to help monitor the progress of the inquiry. The RCN matches the individual to the results of his or her redress case within DHS TRIP. An additional feature of the RCN is that once a traveler's case is closed, he or she may use the RCN when making future air travel reservations. In conjunction with TSA's Secure Flight Program, airlines have modified their reservation systems to allow an individual with a RCN to enter it into the reservation system to prevent the individual from being misidentified.

6. Upon receipt of a Traveler Inquiry Form, DHS TRIP reviews the information submitted by the traveler and evaluates each inquiry to determine with which DHS components or other governmental agencies it must coordinate to address the issues underlying the claimed travel difficulties. If a traveler experienced problems because he or she was "misidentified" – *i.e.*, the traveler's name is the same as or similar to the name of a different individual who is included in the government's consolidated and integrated terrorist watchlist, known as the Terrorist Screening Database (TSDB) – then DHS TRIP, in coordination with all relevant government agencies, attempts to prevent future misidentification by updating or correcting information in the traveler's record, or taking other action as warranted. Approximately 98% of travelers who make redress inquiries with DHS TRIP experienced difficulties as a result of misidentification and are not in fact in the TSDB.

7. In the small fraction of cases in which DHS TRIP determines that a traveler is an exact or possible match to an identity in the TSDB, DHS TRIP refers the matter to the Redress Unit at the Terrorist Screening Center (TSC). The TSC maintains the TSDB, of which the No Fly List and Selectee List are subsets. TSA implements the No Fly List by preventing individuals on the List from boarding aircraft flying to, from, or over the United States. TSA implements the Selectee List by requiring individuals on the List to undergo enhanced security screening before boarding an aircraft flying to, from, or over the United States. When a traveler's redress inquiry is referred to the TSC Redress Unit, the Unit reviews the traveler's record in consultation with other agencies, as appropriate. Upon the conclusion of that review, the TSC Redress Unit notifies DHS TRIP of the outcome of the review.

8. Once all relevant agencies have reviewed a traveler's redress inquiry and record and reached a determination regarding the traveler's appropriate status with respect to the TSDB and any other travel issue that was identified by the traveler, DHS TRIP issues a determination letter to the traveler. Throughout this administrative process, DHS TRIP maintains a record of the steps it has taken in each individual's case.

9. When appropriate, the DHS TRIP redress process can result in removal of a traveler from the No Fly List, the Selectee List, or the TSDB.

B. Redress Procedures for United States Citizens and Lawful Permanent Residents Denied Boarding Because They Were on the No Fly List

10. Pursuant to prior government policy, DHS TRIP determination letters did not disclose whether or not the traveler who sought redress was included on the No Fly List. This fact was not disclosed because the underlying information used to determine whether an

individual should be placed on the No Fly List is usually based on classified and sensitive law enforcement and intelligence information.

11. In order to improve the redress process and increase transparency, the government has revised the DHS TRIP procedures for citizens and lawful permanent residents of the United States (collectively known as United States persons) who make redress inquiries regarding the denial of aircraft boarding.

12. The new redress procedures now provide that a United States person who (a) purchases an airline ticket for a flight to, from, or over the United States; (b) is denied boarding that flight; (c) subsequently files a redress inquiry regarding the denial of boarding with DHS TRIP; (d) provides all information and documentation required by DHS TRIP; and (e) is determined to be appropriately on the No Fly List at the conclusion of the TSC Redress Unit's review of the redress inquiry, will receive a letter stating that "you are on the No Fly List" and providing the option to request additional information and specific instructions for doing so.

13. If a United States person who receives a letter stating that he or she is on the No Fly List properly and timely requests additional information, DHS TRIP will respond with a second letter that identifies the specific criterion or criteria under which the individual was placed on the No Fly List. To the extent feasible, consistent with the national security and law enforcement interests at stake, the second letter will also include an unclassified summary of information supporting the individual's placement on the No Fly List. The amount and type of information provided will vary on a case-by-case basis, depending on the facts and circumstances. In some circumstances, DHS TRIP may not be able to provide any unclassified summary without compromising national security or law enforcement interests.

The second letter provides the option to seek additional review of status on the No Fly List and invites the submission of any information believed to be relevant to determining whether continued status on the List is appropriate.

14. If a United States person timely responds to the second letter and requests additional review, DHS TRIP forwards the response and any enclosed information to the TSC Redress Unit for careful consideration. Upon completion of TSC's comprehensive review of everything submitted to DHS TRIP and other available information, the TSC Principal Deputy Director provides DHS TRIP with a recommendation to the TSA Administrator as to whether the person should be removed from or remain on the No Fly List and the reasons for that recommendation. The TSC Principal Deputy Director's recommendation may contain classified information and/or law enforcement sensitive information. If the recommendation does contain classified and/or law enforcement sensitive information, it will also contain a determination regarding whether and to what extent DHS TRIP is authorized to disclose such information when providing a final redress response.

15. After DHS TRIP receives the recommendation from TSC, it provides the recommendation to the TSA Administrator along with the United States person's complete DHS TRIP file (including all information submitted by the person). The TSA Administrator will review these materials and will either remand the case back to TSC with a request for additional information or clarification or issue a final order removing the United States person from the No Fly List or maintaining him on the List.

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

17. Upon issuance of a final order by the TSA Administrator, DHS TRIP will provide TSC and the United States person with a copy of the order. DHS TRIP will also inform a United States person who remains on the No Fly List pursuant to the TSA Administrator's final order that he may seek judicial review of the final order pursuant to 49 U.S.C. § 46110 or as otherwise provided by law.

C. Redress Procedures Applied to Six Plaintiffs

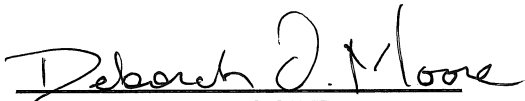
18. During the course of this litigation, DHS TRIP applied the substance of the above-described procedures to the six Plaintiffs in this matter who were on the No Fly List as of November 14, 2014. *See* Dkt. No. 165 (Defendants' Status Report of January 22, 2015). However, due to litigation deadlines, DHS TRIP combined the first and second letters referenced in paragraphs 12 and 13 of this Declaration into one letter informing each of these six Plaintiffs of his status on the No Fly List, the specific criterion or criteria under which he was placed on the List, and, to the extent possible without compromising national security or law enforcement interests, the unclassified reasons that the applicable criterion or criteria were satisfied. The letters also informed each of these six Plaintiffs of the opportunity to respond and seek additional review.

19. All six of the Plaintiffs who were informed that they were on the No Fly List responded seeking additional review. Upon DHS TRIP's receipt of these responses, DHS TRIP forwarded the responses to the TSC Redress Unit. The procedures described above in paragraphs 14 through 17 were then followed to reach a final order of the TSA Administrator regarding the status of each of these six Plaintiffs with respect to the No Fly List. The TSA Administrator issued final orders to five of these Plaintiffs on January 21, 2015, and to the

remaining one of these Plaintiffs on January 28, 2015. *See* Dkt. No. 165; Dkt. No. 167 (Joint Status Report of February 6, 2015).

I declare under penalty of perjury that the forgoing information is true and correct to the best of my knowledge and belief.

DATED: May 27, 2015
Arlington, VA


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