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**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.,	<b>DEFENDANTS' CONCISE STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 56-1(C)</b>

**DEFENDANTS' CONCISE STATEMENT OF MATERIAL FACTS**

Pursuant to Local Rule 56-1(c), Defendants Eric H. Holder, Jr., Attorney General of the United States; Robert Mueller, Director of the Federal Bureau of Investigation; and Timothy Healy, Director of the Terrorist Screening Center, file this concise statement of material facts that articulates the "relevant material facts that are essential" for the Court to decide the motion for summary judgment. In addition to the stipulated facts filed at Docket Entry No. 41, the

**Defendant's Concise Statement of Material Facts in Support of Motion for Summary Judgment**  
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following relevant and materials facts are essential to Defendants' Motion for Summary

Judgment:

1. All Plaintiffs who wished to return to the United States at this time have returned to the United States. [Joint Status Report, Docket No. 28]; [Plaintiffs' Notice of Withdrawal of Motion for a Preliminary Injunction, Docket No. 33]
2. During the time periods in which Plaintiffs allege they were denied boarding, there were alternatives to air travel into the United States from Yemen, Saudi Arabia, and Egypt. [Raya Decl. ¶¶ 3-7]
3. Plaintiffs Knaeble and Washburn returned to and entered the United States without receiving any assistance or advance assurances from the Defendants. [Compl. ¶¶ 131-53]; [Knaeble PI Decl. ¶¶ 28-40]; [Washburn PI Decl. ¶¶ 18-25].
4. Plaintiff Persaud travelled to Miami from the U.S. Virgin Islands by ship. [Compl. ¶¶ 337-40].
5. On August 16, 2010, Plaintiff Omar entered the U.S. as a lawful permanent resident. [McAleenan Decl. ¶ 5].
6. Plaintiff Ahmed departed the United States on July 27, 2009. [McAleenan Decl. ¶ 7].
7. Plaintiff Ahmed's planned return flight was scheduled for February 4, 2010, 192 days after he left the U.S. [Compl. ¶¶ 238-39]; [McAleenan Decl. ¶ 8].
8. Plaintiff Ahmed returned to the United States on October 19, 2010 and was inspected by CBP as an applicant for admission. [McAleenan Decl. ¶ 10]. After that inspection, Mr. Ahmed was issued a notice to appear charging him with inadmissibility pursuant to 8 U.S.C. 1182(a)(7)(A)(i)(I) [Immigrant without valid documents] based on his 2009-2010 abandonment of his lawful permanent residence status and was paroled into the United

States pending a removal hearing before an Immigration Judge. [McAleenan Decl. ¶ 11].

On November 16, 2010, CBP issued a superseding notice to appear, again charging him with inadmissibility pursuant to 8 U.S.C. 1182(a)(7)(A)(i)(I) [Immigrant without valid documents], but based on his 2007 abandonment of his lawful permanent residence status. [McAleenan Decl. ¶ 11].

9. The TSDB and the No Fly and Selectee Lists contain only identifying information and are separated from their supporting information to ensure that the broadest array of appropriate federal, state and local government officials may access the information in carrying out their law enforcement and security-related duties. [Piehota Decl. ¶¶ 6, 24]; [Giuliano Decl. ¶¶ 7, 9].
10. The TSDB and No Fly List nominations are based on information derived from underlying counterterrorism investigations. The information related to these investigations is usually classified and highly sensitive. The government's position is that disclosure of an individual's TSDB status, as well as any information supporting his or her inclusion in the TSDB and/or the No Fly List, would inform suspected terrorists that they are being investigated by the FBI, reveal classified sources and methods, and harm national security. [Piehota Decl. ¶¶ 8, 24-29]; [Giuliano Decl. ¶¶ 8, 13-22]
11. Nominations to the TSDB and the No Fly List are reviewed by TSC officials to ensure that the requisite criteria are met prior to inclusion in the TSDB or No Fly List subset. [Piehota Dec. ¶¶ 19-23]. The TSDB and the No Fly List are continuously updated and regularly reviewed and audited. [Piehota ¶¶ 10, 23]
12. Less than 1% of all complaints received by the Department of Homeland Security Traveler Redress Inquiry Program actually have some connection to the TSDB.

[Kennedy Dec. ¶ 9.]. DHS TRIP determination letters have been sent to all seventeen (17) Plaintiffs in this action. [Kennedy Dec. ¶ 13]. The letters provided to all Plaintiffs provide either that “[t]his letter constitutes our final agency decision, which is reviewable by the United States Court of Appeals under 49 U.S.C. § 46110,” or that “this determination will become final 30 calendar days after you receive this letter unless you file a timely administrative appeal. Final determinations are reviewable by the United States Court of Appeals pursuant to 49 U.S.C. § 46110.” [Kennedy Dec. ¶ 11].

Dated: November 17, 2010

Respectfully submitted,

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*\s\ Diane Kelleher*

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