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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., <i>Defendants.</i>	PARTIES' SUPPLEMENTAL JOINT STATUS REPORT

SUPPLEMENTAL JOINT STATUS REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: September 3, 2014

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