



Office of the Attorney General
Washington, D. C. 20530

December 4, 2014

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Ayman Latif et al. v. Eric H. Holder, Jr., et al., No. 10-750 (D. Or.)

Dear Senator Grassley:

This letter is being sent pursuant to 28 U.S.C. 530D to notify you that the Department of Justice will not seek any immediate appellate relief from the June 24, 2014 decision of the United States District Court for the District of Oregon in the above-captioned case, and its subsequent October 3, 2014 case management order. The June 24 decision holds that the current procedures for a U.S. person to challenge his asserted inclusion on the "No Fly List" do not satisfy due process, and contemplates that the government will "fashion new procedures that provide Plaintiffs with the requisite due process described herein without jeopardizing national security." Slip op. 61. The October 3 case management order directs the government to take a series of specific steps to carry out its June 24 decision. Copies of both of the court's decisions are enclosed.

The No Fly List is a government watchlist maintained by the Terrorist Screening Center. The Transportation Security Administration (TSA) may prohibit individuals on the No Fly List from boarding a commercial aircraft. TSA also administers a program known as the Department of Homeland Security's Travelers Redress Inquiry Program (DHS TRIP), through which individuals who believe that they have been unfairly or incorrectly delayed or prohibited from boarding an aircraft as a result of TSA's implementation of the No Fly List may request that TSA correct any erroneous information. See 49 U.S.C. 44903(j)(2)(C)(iii)(I), (j)(2)(G)(i); 49 U.S.C. 44926; 49 C.F.R. 1560.201-.207.

Plaintiffs are citizens and lawful permanent residents of the United States who allege that they are on the No Fly List, and that as a result they were prohibited from boarding flights to or from the United States or over United States airspace. Plaintiffs contend that the DHS TRIP process does not satisfy due process because individuals are not told their No Fly List status, provided with the reasons for their inclusion on the No Fly List, or given a meaningful opportunity to challenge their continued inclusion on the No Fly List.

The district court ruled in favor of the plaintiffs on their procedural due process claim. While recognizing the government's strong interest in combating terrorism and ensuring airline safety, as well as in preventing disclosure of classified information, Slip op. at 41-42, the court concluded that greater procedural protections were required in light of the plaintiff's interest in international air travel, combined with the risk of erroneous decision-making under the current procedures, Slip op. at 28-40. The court

held that plaintiffs must be given "notice regarding their status on the No-Fly List and the reasons for placement on that List," which is "reasonably calculated to permit each Plaintiff to submit evidence relevant to the reasons for their respective inclusions on the No-Fly List." Slip Op. 61. The court recognized that it "cannot foreclose the possibility that in some cases such disclosures may be limited or withheld altogether because any such disclosure would create an undue risk to national security." Slip Op. at 62. The court stated that the government must "make such a determination on a case-by-case basis including consideration of, at a minimum, * * * (1) the nature and extent of the classified information, (2) the nature and extent of the threat to national security, and (3) the possible avenues available to allow the Plaintiff to respond more effectively to the charges." Slip Op. at 62. That order was essentially an interlocutory declaratory order and was not appealable.

On October 3, 2014, the district court issued a case management order to carry out its June 24 decision. The court directed the government to disclose which plaintiffs are not on the No Fly List; to undertake an interim substantive reconsideration of all remaining plaintiffs by November 14; to disclose to those remaining plaintiffs their No Fly List status and the reasons for that status; to allow plaintiffs to submit additional information responsive to those reasons; to make a status report to the district court by December 19, 2014; and to make a final and complete reconsideration of all remaining plaintiffs by January 16, 2015.

The Department has defended the constitutionality of its terrorist watchlisting and redress procedures in several cases, and will continue to do so. However, the Solicitor General has determined not to pursue immediate appellate relief from the October 3, 2014 district court order, which contemplates significant government discretion in creating alternative procedures that would satisfy due process. As the Department recently notified the district court in this matter, "Defendants intend to make changes to the existing redress process regarding the No Fly List, in coordination with other agencies involved in aviation security screening, informed by the myriad legal and policy concerns that affect the Government's administration of the No Fly List and the redress process, and with full consideration of the Court's opinion." Aug. 4, 2014 Status Report, Doc. No. 144, at 3-4. The district court's June 24 decision, and its October 3 case management order, permit the government to apply those policy changes in the context of this litigation. An appeal of an order relating to older procedures, which will soon be updated, would serve little purpose.

The government filed a notice of appeal on December 2, 2014. The government intends to dismiss its pending appeal on December 18, 2014.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric H. Holder, Jr.", with a stylized flourish at the end.

Eric H. Holder, Jr.
Attorney General

Enclosures