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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICHELLE D. GREEN; JOHN F. SHAW;
DAVID C. FATHI; SAROSH SYED;
MOHAMED IBRAHIM; DAVID NELSON;
ALEXANDRA HAY, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

TRANSPORTATION SECURITY
ADMINISTRATION; DAVID M. STONE;
DEPARTMENT OF HOMELAND
SECURITY; TOM RIDGE,

Defendants.

Case No.

COMPLAINT—CLASS ACTION

PRELIMINARY STATEMENT

1. Plaintiffs bring this lawsuit on behalf of themselves and similarly situated individuals to challenge the Transportation Security Administration’s (“TSA’s”) administration and management of the “No-Fly List,” a list circulated to commercial airlines and security personnel with instructions to detain and question any passenger whose name matches or is similar to one on the No-Fly List.

2. Defendants began implementing the No-Fly List in November 2001. Since then, it has resulted in hundreds, if not thousands, of innocent passengers being routinely stopped, questioned, and searched. Defendants the TSA, the Department of Homeland Security (“DHS”),

1 and the head administrators of these agencies do not apprise individuals of why they were
2 identified by the No-Fly List. Individuals whom the TSA concedes are not security threats
3 continue to be identified on the No-Fly List. Passengers have no meaningful opportunity to clear
4 their names and avoid being subjected to these delays, searches, and stigma virtually every time
5 they fly.

6 3. Plaintiffs in this action are innocent passengers with no links to terrorist activity.
7 As used in this Complaint, the term “innocent passengers” refers to individuals who are
8 identified by the No-Fly List because their names are similar or identical to names on the No-Fly
9 List. These plaintiffs are innocent of any wrongdoing and pose no threat to aviation security.
10 Nonetheless, they are subject to stigmatization and repeated interrogations, delays, enhanced
11 searches, detentions, and/or other travel impediments. Plaintiffs are not selected for such
12 treatment randomly. Instead, innocent passengers are selected for such treatment because they
13 are associated with the No-Fly List and continue to be subjected to such treatment routinely
14 when they fly.

15 4. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a
16 class of similarly situated individuals under the Due Process Clause of the Fifth Amendment and
17 the Search and Seizure Clause of the Fourth Amendment. Defendants should be required to
18 maintain the No-Fly List in an accurate manner that does not result in stigmatization,
19 interrogation, delay, enhanced searches, detention, and/or other travel impediments for innocent
20 passengers. Defendants should also be required to give Plaintiffs and other passengers the
21 opportunity to clear their names so that they are no longer subjected to such unconstitutional
22 treatment in the future.

23 JURISDICTION AND VENUE

24 5. This court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question).
25 Pursuant to 28 U.S.C. §§ 2201 and 2202 (declaratory judgments), this Court has jurisdiction to
26 declare the rights of the parties and to grant all further relief deemed necessary and proper. The
27 Court has authority to award costs and attorneys’ fees under 28 U.S.C. § 2412. Venue is proper

1 in this district under 28 U.S.C. § 1391(e) (venue in actions against United States officers and
2 agencies).

3 **PARTIES**

4 **Plaintiffs**

5 6. Plaintiff Michelle D. Green is a United States citizen and is on active duty as a
6 Master Sergeant in charge of a medical readiness unit in the United States Air Force. She resides
7 at the Eielson Air Force Base in Alaska. She has no criminal record and no ties to terrorist
8 organizations.

9 7. Plaintiff John F. Shaw is a United States citizen and a retired Presbyterian
10 minister. He resides in Sammamish, Washington. He has no criminal record and no ties to
11 terrorist organizations.

12 8. Plaintiff David C. Fathi is a United States citizen and resides in Washington, D.C.
13 He serves as senior staff counsel for the American Civil Liberties Union's National Prison
14 Project. His criminal record consists of two arrests for peaceful civil disobedience in 1988 and
15 1991. He has no ties to terrorist organizations.

16 9. Plaintiff Sarosh Syed is a United States citizen and resides in Seattle. He is
17 employed as the Special Projects Coordinator with the American Civil Liberties Union of
18 Washington. He has no criminal record and no ties to terrorist organizations.

19 10. Plaintiff Mohamed Ibrahim is a United States citizen and works as a Project
20 Voice Coordinator for the American Friends Service Committee. He resides in Philadelphia. He
21 has no criminal record and no ties to terrorist organizations.

22 11. Plaintiff David Nelson is a United States citizen and resides in Belleville, Illinois.
23 He is a practicing attorney in his own law firm, Nelson and Nelson, Attorneys at Law, P.C. He
24 has no criminal record and no ties to terrorist organizations.

25 12. Plaintiff Alexandra Hay is a United States citizen and is currently a third-year
26 student at Middlebury College in Middlebury, Vermont. Her parents reside in Boalsburg,
27 Pennsylvania. She has no criminal record and no ties to terrorist organizations.

1 **Defendants**

2 13. Defendant the Transportation Security Administration (“TSA”) is a sub-agency
3 and part of the Department of Homeland Security (“DHS”). Established in 2001, it is the sub-
4 agency responsible for maintaining and managing the No-Fly List.

5 14. Defendant David M. Stone is the Acting Administrator of the TSA, and, on
6 information and belief, is responsible for maintaining and managing the No-Fly List. He is sued
7 here in his official capacity.

8 15. Defendant the Department of Homeland Security (“DHS”) is the agency
9 ultimately responsible for the conduct of the TSA and, in turn, the No-Fly List.

10 16. Defendant Tom Ridge is the Secretary of the DHS. On information and belief, he
11 is responsible for the conduct of the TSA and, in turn, the No-Fly List. He is sued here in his
12 official capacity.

13 **FACTUAL ALLEGATIONS**

14 17. For several years prior to the terrorist attacks of September 11, 2001, the federal
15 government issued directives identifying persons who were deemed to pose a threat to civil
16 aviation. When the Transportation Security Administration was created in 2001, it assumed
17 responsibility for compiling and administering these directives. Today, Defendants the DHS,
18 Tom Ridge, the TSA, and David M. Stone administer and maintain systems of records
19 comprising at least two watch lists of individuals perceived to be threats to aviation security:
20 (1) a “no-fly” list and (2) a “selectee” list. On information and belief, these lists contain
21 hundreds if not thousands of names. The “no-fly” list contains names of people whom air
22 carriers are prohibited from transporting. The “selectee” list contains names of passengers who
23 must go through additional security screening prior to boarding. This Complaint uses the term
24 “No-Fly List” to refer to both the “no-fly” list and the “selectee” list.

25 18. The No-Fly List has been the subject of intense media scrutiny. News articles
26 report that innocent individuals repeatedly are stopped, delayed, detained, questioned, and
27 searched as a result of the No-Fly List. Yet, the TSA denied its existence until November 2002.

1 In December 2002, the ACLU of Northern California, representing two anti-war protesters who
2 were stopped and prevented from boarding their flight due to the No-Fly List, filed a request for
3 information under the Freedom of Information Act ("FOIA"). Despite this request and a
4 subsequent lawsuit filed under FOIA, as well as the intense public interest in the No-Fly List,
5 Defendants refuse to disclose important information regarding the No-Fly List, although
6 Defendants did disclose some information. The information Defendants disclosed fails to
7 answer basic questions such as the criteria for placing names on or removing names from the No-
8 Fly List, procedures for amending information on the No-Fly List, or rules for maintaining or
9 managing the No-Fly List. Defendants continue to implement the No-Fly List to stop,
10 interrogate, detain, and search innocent passengers.

11 19. Because Defendants have refused to provide any information regarding the
12 creation, maintenance, and implementation of the No-Fly List, Defendants could be using race,
13 religion, ethnicity, national origin, or the exercise of First Amendment protected rights as factors
14 in the No-Fly List.

15 20. The No-Fly List includes individuals' names, dates of birth, nationalities, passport
16 numbers, and other identifying information. It is not maintained with sufficient accuracy,
17 relevance, timeliness, or completeness to ensure that innocent passengers are not incorrectly and
18 unfairly stopped, interrogated, detained, searched, or subjected to other travel impediments.

19 21. On information and belief, Defendants periodically disseminate updated versions
20 of the No-Fly List as attachments to security directives and emergency amendments to
21 commercial airlines in the United States. The 15 domestic airlines employ nearly half a million
22 individuals, and, on information and belief, a substantial percentage of these individuals have
23 access to the No-Fly List. On further information and belief, these security directives and the
24 No-Fly List are also disseminated to customs and immigration agents, airport security personnel,
25 and law enforcement agencies, and information from the No-Fly List is fed into other security
26 databases such as the Interagency Border Inspection System ("IBIS") used by the U.S. Customs
27 Service, Immigration and Naturalization Service, Federal Bureau of Investigation ("FBI"),

1 Interpol, Drug Enforcement Administration (“DEA”), Bureau of Alcohol, Tobacco, Firearms and
2 Explosives (“ATF”), the Internal Revenue Service (“IRS”), the Coast Guard, the Federal
3 Aviation Administration (“FAA”), and the Secret Service. Upon further information and belief,
4 Defendants instruct recipients of the No-Fly List to detain and interrogate any individual who
5 checks in for or deplanes from a flight whose name is similar or identical to a name that appears
6 on the No-Fly List. Defendants do not make reasonable efforts to ensure sufficient accuracy,
7 relevance, timeliness, or completeness to guarantee fairness to innocent passengers who are
8 flagged by the No-Fly List.

9 22. On information and belief, Defendants require airlines to install computer
10 programs to match the names of passengers to the No-Fly List. When a passenger with a name
11 similar or identical to a name on the No-Fly List attempts to check in, the airline’s computer
12 prevents further processing of the passenger’s boarding pass. The computer program alerts
13 airline personnel to contact security and/or law enforcement agents.

14 23. Innocent passengers at this point are sometimes informed, in full view of other
15 passengers waiting in line, that their names are on a federal security list. This results in
16 significant embarrassment and humiliation to the passenger, as fellow passengers and the
17 traveling public subsequently regard the innocent passenger with suspicion or fear. In many
18 instances, an airline agent takes the passenger’s identification documents to a back room. The
19 passenger is not free to leave, as the agent has his or her driver’s license or passport. After a
20 delay of up to forty-five minutes, the airline agent returns.

21 24. In other instances, airline agents summon law enforcement or security personnel
22 to question the innocent passenger. The passenger typically is not free to leave and is prevented
23 from proceeding on his or her flight until the interrogation is completed. Often, this
24 interrogation occurs within full view of other passengers. On some occasions, uniformed
25 security personnel or law enforcement threaten the innocent passenger with arrest and/or escort
26 the passenger through the airport to a separate interrogation area, causing significant
27 embarrassment and humiliation to the passenger.

1 25. The interrogation of innocent passengers who are stopped as a result of the No-
2 Fly List has taken up to three hours. During these interrogations, the innocent passenger's body
3 and luggage are usually searched. Officers thoroughly review all of the documents in the
4 passenger's possession, sometimes making copies of them, and hand-search the passenger's
5 luggage. Uniformed officers question the innocent passenger about residence, travel plans,
6 occupation, and other personal information. The officers frequently employ a hostile and
7 accusatory tone and treat the passenger as a suspected terrorist.

8 26. Eventually, when the innocent passenger succeeds in persuading the airline agent
9 and/or security personnel and/or law enforcement of his or her identity, a boarding pass is issued.
10 These boarding passes, however, usually are stamped with a mark to indicate that the passenger
11 must be subjected to enhanced screening procedures, also referred to as "secondary screening."
12 When an innocent No-Fly List passenger approaches the security line for ordinary passengers, he
13 or she is directed to a separate line for an enhanced search. This search includes a body search,
14 usually involving a wand and/or physical pat-down, and a hand-search of all of the items in the
15 passenger's luggage. This search is significantly more intrusive than the searches to which other
16 individuals are subject. These innocent passengers are not selected for these enhanced searches
17 randomly. Rather, they are selected because they are flagged in connection with the No-Fly List.

18 27. Innocent passengers subjected to this treatment are stigmatized and subject to
19 interrogations, delays, enhanced searches, detentions, and/or other travel impediments when they
20 fly. They are treated differently from other passengers whose names are not associated with the
21 No-Fly List. In addition, these passengers generally are not permitted to check in for flights
22 using the internet or computerized e-ticket kiosks like other passengers. Sometimes, as a result
23 of delays, innocent passengers miss their flights and have, on occasion, even been forced to pay
24 for a substitute flight out of their own pockets.

25 28. Aside from the difficulties in obtaining boarding passes, innocent passengers on
26 the No-Fly List also suffer significant embarrassment, delays, enhanced searches, detentions,
27 and/or other travel impediments in proceeding through customs and immigration. They are

1 pulled out of the immigration line by uniformed officers when they enter or leave the United
2 States. They are sometimes taken to a separate room for interrogation, or they are questioned in
3 full view of other passengers. These innocent passengers also are subjected to enhanced
4 screening multiple times within a single trip, including hand-searches through their luggage.

5 29. There is no uniform policy for innocent passengers to learn why they have been
6 singled out because of the No-Fly List. Some innocent passengers subjected to this stigma and
7 these interrogations, delays, enhanced searches, detentions, and/or other travel impediments are
8 never apprised that their delays are connected to the No-Fly List. Some are told that they were
9 selected for this treatment randomly, even when they are selected virtually every time they fly.

10 30. For innocent passengers who are told that they have been identified in connection
11 with the No-Fly List, Defendants have not instituted a uniform policy for informing them of
12 procedures available to contest their placement on the No-Fly List. The TSA does not publicize
13 its ombudsman process at airports or elsewhere. As a result, some innocent passengers who
14 inquire as to why they were placed on the No-Fly List are told that there is no available recourse
15 and that they will continue to be flagged every time they fly. Other individuals are told that the
16 only recourse available is to contact the FBI or to retain an attorney. Some individuals are
17 told to contact the TSA, but are not given any contact information.

18 31. Many innocent passengers do not report these incidents to the TSA or the FBI
19 because they fear that providing more information to the government will simply aggravate their
20 ability to fly in the future without stigma, interrogations, delays, enhanced searches, detentions,
21 and/or other travel impediments. Some of the individuals who do report these incidents to the
22 FBI obtain no relief.

23 32. Innocent passengers who pursue the TSA ombudsman process obtain no
24 meaningful relief. A few passengers learn about the process when they receive a letter from an
25 airline or the TSA instructing them to submit to the TSA a written complaint describing in detail
26 the events that occurred. The TSA states that it will respond to such complaints only if
27 "circumstances warrant it." There is no indication of what situations warrant a response. Upon

1 information and belief, many innocent passengers who follow this procedure receive no response
2 and continue to be flagged by the No-Fly List.

3 33. In instances in which the TSA deems a complaint sufficiently meritorious, it
4 sends the individual a Passenger Identity Verification Form (“PIVF”), requesting extensive
5 personal information including address, social security number, date of birth, and certified copies
6 of three forms of identification. In some cases, innocent passengers who complete the PIVF
7 receive no response from the TSA.

8 34. In other cases, the TSA processes the PIVF and then issues a letter that the
9 passenger can show to airline personnel in an effort to persuade them that he or she has been
10 cleared by the TSA. Typically, the letter sent to the passenger contains the following
11 qualification: “While TSA cannot ensure that your travel will be delay free, these procedures
12 should streamline your check-in process. Please note that you may still experience enhanced
13 screening at security screening locations.” Many individuals who have completed the TSA’s
14 identity verification process have obtained no meaningful relief and continue to be subject to
15 stigma, interrogation, delay, enhanced search, detention, and/or other travel impediments when
16 they fly. Upon information and belief, the TSA has not informed the airlines and security
17 personnel of the PIVF process in any systematic manner. Upon further information and belief,
18 the PIVF process does not expunge the innocent passenger’s name from the No-Fly List.

19 Plaintiff Michelle D. Green

20 35. Master Sergeant Michelle D. Green is a Non-Commissioned Officer in charge of
21 a medical readiness unit in the United States Air Force. She is a United States citizen and resides
22 on Eielson Air Force Base in Alaska. She is the mother of three children, one recently adopted.
23 MSgt. Green has no criminal record and no ties to terrorist organizations.

24 36. On military orders, MSgt. Green was scheduled to fly from Fairbanks, AK, to
25 Seattle, WA, on January 2, 2004. When she attempted to check in for her flight in Fairbanks, the
26 ticket agent informed her that there was a computer problem. The agent asked MSgt. Green for
27 her date of birth and middle name. The agent took a copy of MSgt. Green’s orders and went to a

1 back room. MSgt. Green was not free to leave, as the agent had her orders. Only after
2 approximately forty-five minutes was the agent able to process a boarding pass.

3 37. The following day, MSgt. Green was scheduled to fly from Seattle, WA, to
4 Honolulu, HI. When she tried to check in at the ticket counter, the agent asked whether she had
5 encountered any problems the previous day. MSgt. Green replied that the agent from the day
6 before had run into computer problems. The agent began laughing and, in full view of other
7 passengers waiting in line, explained that the reason for her delay was not a computer problem,
8 but rather because she was on a No-Fly List. He explained that she would likely encounter
9 problems every time she flies.

10 38. The agent then called corporate security in Chicago, who explained that there was
11 a person with the same first name, last name and date of birth, but different middle name, on the
12 No-Fly List. After approximately forty-five minutes, the agent was able to process MSgt.
13 Green's boarding pass. During this time, MSgt. Green did not believe she was free to leave and
14 was unable to proceed to her flight without her boarding pass.

15 39. MSgt. Green asked whether there was anything she could do to avoid these
16 problems in the future, and the airline agent told her that there was nothing she could do except
17 obtain a frequent flyer number with the airline so that they might be able to identify her.

18 40. After these delays in obtaining her boarding passes, MSgt. Green was also
19 subjected to enhanced screening procedures. Uniformed security personnel searched her luggage
20 by hand and used a wand over her body. MSgt. Green was also subjected to a physical pat-
21 down. MSgt. Green did not believe she was free to leave or proceed to her flight without
22 subjecting herself to these additional searches.

23 41. On January 10, 2004, MSgt. Green was scheduled to return from Honolulu to
24 Fairbanks, again via Seattle. When she checked in for her flight in Honolulu, the ticket agent
25 was unable to print her boarding pass for her connecting flight from Seattle to Fairbanks. Thus,
26 when she arrived in Seattle, she was required to check in again. The ticket agent in Seattle was
27 unable to print her boarding pass, and, to MSgt. Green's embarrassment, announced very loudly

1 in front of the other passengers and MSgt. Green's supervisor, Capt. Michael Berry, that MSgt.
2 Green needed to be cleared from the "list." MSgt. Green waited with Capt. Berry for fifteen
3 minutes for another agent to arrive and clear her. The agent informed MSgt. Green that he
4 would need to accompany her downstairs to clear her name. The flight was already boarding
5 passengers at this point. When MSgt. Green alerted the agent to this fact, he treated her with
6 disdain and called security. After an additional fifteen minutes and after the plane had boarded
7 its last passengers, MSgt. Green was finally permitted to board her flight, although she was not
8 seated in her assigned window seat.

9 42. As a result of Defendants' actions, MSgt. Green has been stigmatized as a
10 suspected terrorist. She is also subject to repeated interrogations, delays, enhanced searches,
11 detentions, and/or other travel impediments, and prevented from obtaining a boarding pass
12 through the internet or computerized e-ticket kiosks like other passengers.

13 Plaintiff John F. Shaw

14 43. The Rev. Dr. John F. Shaw is a retired member of the clergy with a Ph.D. in
15 pastoral counseling. Dr. Shaw was ordained by the Presbyterian Church in 1954. His most
16 recent position was as a chaplain for Overlake Hospital, and he retired in 1991. Dr. Shaw resides
17 with his wife in Sammamish, a suburb of Seattle, and they have five adult children. He has no
18 criminal record and no ties to terrorist organizations.

19 44. Dr. Shaw's first encounter with the No-Fly List occurred in mid-2002, when he
20 flew with his wife from Seattle to Medford, OR. When they attempted to check in for their flight
21 at the curbside with the skycap, the agent typed their names into the computer and then said, "I'll
22 be right back." The agent left with the documents that the Shaws had given him and returned,
23 requesting that the Shaws accompany him to the ticket counter.

24 45. At the ticket counter, the airline agent asked for Dr. Shaw's identification and
25 took his driver's license and ticket into a back room. After some time had passed, the agent
26 returned, scowling. During this time, Dr. Shaw did not feel free to leave. The agent then typed
27 some information into the computer and generated the Shaws' boarding passes and luggage tags.

1 When Dr. Shaw inquired as to what the problem was, he received no answer. When he asked
2 again, the airline agent replied, in full view of the other passengers waiting in line, "Your name
3 is on the FBI list." The agent provided no further explanation or apology. Dr. Shaw was
4 alarmed that he was being targeted by the FBI, as he has no criminal record and has never done
5 anything to make him a suspect.

6 46. On February 13, 2004, Dr. Shaw was scheduled to fly with his wife again, this
7 time on a vacation to South Africa. They provided their passports to the ticket agent at the
8 airline counter, but the agent had difficulty processing their boarding passes. The agent asked
9 for the Shaws' passports a second time and took the documents into a back room. The Shaws
10 were not free to leave because the agent had their passports.

11 47. After twenty minutes, the agent returned with the passports, without offering any
12 apology or explanation. The agent continued to have problems processing the boarding passes
13 and requested the assistance of another ticket agent. Eventually, Dr. Shaw and his wife received
14 their boarding passes, which were stamped for special screening.

15 48. Dr. Shaw and his wife proceeded through security. They were directed to a
16 separate line for enhanced screening. Three uniformed TSA agents proceeded to use a wand
17 over the Shaws' bodies, physically patted them down, had them remove their shoes, and hand-
18 searched their belongings. The agents removed contents from the Shaws' carry-on luggage with
19 little regard for how the contents were placed back in the bags. After this search, the Shaws were
20 permitted to board their flight, with only ten minutes remaining before scheduled takeoff.

21 49. Upon returning from his trip, on March 4, 2004, Dr. Shaw contacted the Seattle
22 FBI office to complain. The duty officer informed him that the FBI does not maintain the No-
23 Fly List and advised him to contact his Congressional representative and the TSA.

24 50. On March 16, 2004, Dr. Shaw spoke with a representative from the TSA's
25 ombudsman office. After Dr. Shaw described his situation, the agent faxed him a letter
26 requesting that he complete the attached Passenger Identity Verification Form. This letter states:
27 "While TSA cannot ensure that this procedure will relieve all delays, we hope it will facilitate

1 more efficient check-in procedures for you. Additionally, TSA has issued guidance to the
2 airlines to clarify further the No Fly List clearance protocol.” Dr. Shaw completed the form and
3 submitted the required certified copies of three pieces of identification on March 18, 2004.

4 51. Dr. Shaw’s son, named John F. Shaw, Jr., has encountered similar experiences
5 when attempting to travel by plane on at least five occasions.

6 52. As a result of Defendants’ actions, Dr. Shaw has been stigmatized as a suspected
7 terrorist. He is also subject to repeated interrogations, delays, enhanced searches, detentions,
8 and/or other travel impediments. Dr. Shaw generally cannot check in to flights using the internet
9 or computerized e-ticket kiosks like other passengers.

10 Plaintiff David C. Fathi

11 53. Mr. David C. Fathi is a senior staff counsel for the American Civil Liberties
12 Union’s National Prison Project. Mr. Fathi is of Middle Eastern descent and “Fathi” is an
13 Iranian surname. He has no ties to terrorist organizations, and his criminal record consists of two
14 arrests for peaceful civil disobedience.

15 54. Mr. Fathi’s first encounter with the No-Fly List was on July 21, 2003, when he
16 was scheduled to fly from Washington, DC, to Milwaukee, WI. When Mr. Fathi arrived at the
17 ticket counter to check in, the airline agent typed in his name and informed him that he could not
18 process the boarding pass because Mr. Fathi’s name appeared on a security list. In full view of
19 the other passengers waiting in line, a supervisor came out and explained that Mr. Fathi’s name
20 is similar to one on a list provided by the government and that she was not authorized to check
21 him in. Mr. Fathi felt stigmatized and regarded with suspicion by his fellow passengers and the
22 traveling public. The supervisor explained that the airlines have nothing to do with this process,
23 but that they are directed by the TSA to enforce the TSA’s procedures for handling passengers
24 on the list.

25 55. The supervisor compared Mr. Fathi’s driver’s license with a document containing
26 the words “No-Fly List” at the top. She then took the driver’s license to a back room. Mr. Fathi
27 was not free to leave as the supervisor had his driver’s license. As Mr. Fathi waited, he became

1 concerned about missing his flight and twice requested to speak with a supervisor. In response
2 to this request, the agent threatened to call airport security. After approximately thirty-five
3 minutes, another uniformed supervisor appeared with Mr. Fathi's boarding pass. This boarding
4 pass was stamped with an "*S*". In full view of the other passengers waiting in line, this
5 supervisor stated that although Mr. Fathi was on a government security list, his name did not
6 appear on the No-Fly List.

7 56. As Mr. Fathi proceeded through security, security personnel directed him to a
8 special line for secondary screening, explaining that the "*S*" on his boarding pass required
9 Mr. Fathi to be subjected to enhanced scrutiny. Mr. Fathi asked what the search would entail,
10 and the TSA employee at the security screening area responded, "Are you refusing secondary
11 screening? Because if you are, we'll let the police handle it," and gestured to a police officer
12 who was nearby. Based on this remark, Mr. Fathi did not feel free to refuse consent to the
13 search. A uniformed agent then conducted the search, consisting of a body search using a wand,
14 a physical pat-down of Mr. Fathi's body, a hand-search through Mr. Fathi's luggage, and a
15 review of all of the books and documents Mr. Fathi had in his possession, including the contents
16 of his legal folders which contained privileged client information and attorney work product.

17 57. A TSA supervisor then requested Mr. Fathi's driver's license, copied information
18 such as his home address, and then requested a home telephone number. When Mr. Fathi
19 declined to give his home phone number, a police officer was summoned. The TSA supervisor
20 did not repeat his request for Mr. Fathi's home phone number. Mr. Fathi was extremely
21 distraught and embarrassed by this exchange. After this additional delay, Mr. Fathi was
22 permitted to board his flight at 11:30 a.m., over one hour after he arrived at the airport, and just
23 in time for takeoff.

24 58. On Friday, July 25, 2003, Mr. Fathi was scheduled to return home from
25 Milwaukee. He arrived at the airport at approximately 1:15 p.m., checked in, and received a
26 boarding pass marked with an "*S*." When Mr. Fathi inquired as to the meaning of this mark,
27 the ticket agent responded that it indicated that Mr. Fathi had been selected for secondary

1 screening. Mr. Fathi asked to speak with a supervisor to explain why his boarding pass had been
2 marked with the “*S*,” and the supervisor suggested it was random. The supervisor denied that
3 Mr. Fathi’s name was on a No-Fly List. Mr. Fathi asked to speak with another supervisor.
4 When the supervisor did not appear after twenty-five minutes, Mr. Fathi proceeded to his gate so
5 that he would not miss his flight.

6 59. Mr. Fathi approached the security screening area at approximately 1:45 p.m.
7 When the security agents saw the “*S*” on his boarding pass, they directed Mr. Fathi to a
8 separate screening line. Mr. Fathi asked to speak to a supervisor, and waited for ten minutes
9 while the supervisor arrived. The supervisor was unable to provide any additional information or
10 explanation why Mr. Fathi had been singled out for the enhanced screening process. Mr. Fathi
11 was then subjected to the enhanced screening process, involving a wand waved over his body, a
12 physical pat-down, and a hand-search through his luggage.

13 60. Upon completing the enhanced screening, the agents permitted Mr. Fathi to
14 proceed to the gate. As Mr. Fathi approached the gate, however, an airline security manager and
15 another airline agent stopped Mr. Fathi and told him, in full view of all of the other passengers
16 standing nearby, “you’re on the no-fly list. I don’t know why it wasn’t picked up when you
17 checked in.” The security agent added that they needed to “take care of it with the Sheriff’s
18 office.”

19 61. Three or four uniformed and armed Milwaukee County Sheriff’s Deputies were
20 standing nearby. The security manager handed a small piece of paper to one of these Deputies.
21 Mr. Fathi noticed that the following information appeared on the piece of paper: “David Fathi,”
22 “residence: UK,” and “DOB 1-7-60.” Mr. Fathi has never resided in the United Kingdom, and
23 his birth date is December 21, 1962. The security manager refused to explain why Mr. Fathi was
24 on the No-Fly List, and refused to answer any questions. Instead, he handed Mr. Fathi a piece of
25 paper with contact information for the TSA Ombudsman.

26 62. An armed and uniformed Sheriff’s Deputy then escorted Mr. Fathi, in full view of
27 all of the other passengers, from the screening area to the Sheriff’s office at the airport. A

1 second officer informed Mr. Fathi that they would need to obtain clearance from the FBI before
2 they could permit Mr. Fathi to board his flight. They required Mr. Fathi to turn over his driver's
3 license, boarding pass, and social security number. A TSA officer then entered the office
4 requesting Mr. Fathi's driver's license and boarding pass to write an incident report.

5 63. After some delay, the Sheriff's Deputies obtained clearance from the FBI, and an
6 armed and uniformed Sheriff's Deputy escorted Mr. Fathi back to the security checkpoint, again
7 in full view of the other passengers. Mr. Fathi was then subjected to the enhanced screening
8 procedures a second time. The Deputy then escorted Mr. Fathi to his gate. Mr. Fathi was
9 permitted to board his flight at approximately 3:20 p.m. At no time during the intervening two
10 hours did Mr. Fathi feel free to leave and proceed on his flight without submitting to this process.

11 64. On August 14, 2003, Mr. Fathi contacted the office of the ombudsman at the
12 TSA. When he received no response, he left a second message on August 18, 2003. A TSA
13 employee returned his call on September 3, 2003. Mr. Fathi relayed the two incidents to the
14 employee. On the next day, Ernest A. Cameron from the Office of the Ombudsman called him.
15 Mr. Fathi again described his encounters with the No-Fly List, and Mr. Cameron requested that
16 Mr. Fathi submit a written complaint to him. Mr. Cameron explained that upon receipt of the
17 written complaint, he would send forms for Mr. Fathi to complete. Mr. Cameron explained that
18 under agency policy, it was mandatory for Mr. Fathi to first submit a written complaint before
19 obtaining the forms.

20 65. After this conversation, Mr. Fathi received a Passenger Identity Verification Form
21 ("PIVF") and completed it on October 2, 2003, providing his personal information and certified
22 copies of three forms of identification as required by the instructions on the PIVF. On
23 October 17, 2003, in a letter signed by Ernest A. Cameron, the TSA sent a letter to Mr. Fathi
24 stating, "Based on the information you provided and our subsequent investigation, the
25 Transportation Security Administration (TSA) has verified your identity. Accordingly, we have
26 provided sufficient personal information to the airlines to assist in issuing your boarding pass
27 more efficiently."

1 66. Notwithstanding these assurances, Mr. Fathi continues to be stigmatized and
2 subject to repeated interrogations, delays, enhanced searches, detentions, and/or other travel
3 impediments due to the No-Fly List. On November 24, 2003, Mr. Fathi was scheduled to fly
4 from Washington, DC, to Denver, CO. He attempted to utilize the airline's web check-in
5 procedures, but received a message stating that he would be required to check in at the airport.
6 He then arrived at the airport and attempted to check in using the airline's e-ticket kiosk, but
7 received a message that he would need to check in with an agent.

8 67. After waiting in line to check in, Mr. Fathi provided the agent with his name.
9 When she typed it into the computer, an alert appeared on the screen and she called a supervisor.
10 In full view of the other passengers waiting in line, the supervisor arrived and informed Mr. Fathi
11 that his name was on a security list. The supervisor explained that the reason might be because
12 his name is similar to someone sought by the government. The supervisor then called corporate
13 security and printed out a boarding pass. Mr. Fathi was embarrassed and felt stigmatized for
14 being connected with the No-Fly List.

15 68. The next day, on November 25, 2003, Mr. Fathi was scheduled to fly from
16 Denver to Calgary. Once again, he tried to use the self-serve e-ticket kiosk to check in, but to no
17 avail. He waited in line to see an agent, who was unsuccessful in checking in Mr. Fathi. The
18 agent then called a Ground Security Coordinator, who explained that Mr. Fathi's last name
19 matched the last name of someone sought by the government. The Security Coordinator stated
20 that the government did not know the first name of the suspect. The Security Coordinator then
21 asked for Mr. Fathi's driver's license, passport, and social security number. He left, called
22 corporate security, and then provided Mr. Fathi with his boarding pass. All of this occurred
23 within full view of the other passengers waiting in line, and Mr. Fathi felt that they regarded him
24 with suspicion and fear.

25 69. Mr. Fathi asked the Ground Security Coordinator whether there was anything he
26 could do to prevent similar delays from occurring again in the future. The Ground Security
27 Coordinator told him that he might try using his frequent flyer number when making his

1 reservation, which Mr. Fathi had already done, but that he would probably be subject to the same
2 procedure every time he flies.

3 70. On December 22, 2003, Mr. Fathi was scheduled to fly from Seattle to Calgary.
4 When he arrived at the airport in Seattle, the ticket agent informed him that she was unable to
5 check him in and called her supervisor. In full view of the other passengers, the supervisor
6 informed Mr. Fathi that his name had come up on a No-Fly List circulated by the government.
7 Mr. Fathi again felt embarrassed and stigmatized for being connected to the No-Fly List. The
8 supervisor left with Mr. Fathi's passport and then returned with the boarding pass.

9 71. In February 2004, Mr. Fathi flew to Tanzania on vacation. On his return flight, he
10 flew from Dar Es Salaam to Washington, with a layover in Amsterdam. When his flight landed
11 in Washington on February 28, 2004, he presented his passport and customs declaration to
12 immigration officials. The immigration agent paused after he typed in Mr. Fathi's name in the
13 computer, but then informed Mr. Fathi that he was free to proceed.

14 72. As Mr. Fathi proceeded to retrieve his luggage, a uniformed customs official
15 approached Mr. Fathi and asked to see his passport and customs declaration. She then requested
16 that Mr. Fathi bring his bags to a counter and requested his social security number. The agents at
17 the counter indicated that Mr. Fathi's name and date of birth are similar to ones on a government
18 watch list. Three uniformed agents participated in interrogating Mr. Fathi and would not let him
19 leave. This occurred in full view of the other passengers at the airport, and Mr. Fathi felt
20 embarrassed and stigmatized.

21 73. During this interrogation, Mr. Fathi protested providing his social security
22 number. In response, the customs agents threatened to detain him indefinitely. Mr. Fathi
23 attempted to prove his innocence by showing the letter of clearance provided by the TSA, as well
24 as his passport and driver's license, to no avail. Because Mr. Fathi expressed reluctance to
25 provide his social security card, he was threatened with arrest. Eventually, Mr. Fathi provided
26 his social security card. After approximately one hour, Mr. Fathi was told that he was free to go.
27 Prior to that, he did not feel free to leave.

1 Mohamed Ibrahim

2 79. Mr. Mohamed Ibrahim is a United States citizen and a Project Voice Coordinator
3 for the American Friends Service Committee. He is married with two children and resides in
4 Philadelphia. Mr. Ibrahim has been active in human rights and political organizing, especially
5 against the Bush Administration's anti-terrorism measures. He also frequently speaks on behalf
6 of Amnesty International against torture, primarily against totalitarian regimes in developing
7 countries such as Sudan. Mr. Ibrahim is of East African descent and is a practicing Moslem.
8 "Ibrahim" is a common name for Moslems. Mr. Ibrahim has no criminal record and no ties to
9 terrorist organizations.

10 80. In connection with his advocacy work, for the past eight months, Mr. Ibrahim has
11 traveled approximately twice a month. In November 2003, he had his first encounter with the
12 No-Fly List when he was scheduled to fly from Philadelphia, PA, to San Diego, CA. He was not
13 able to obtain his boarding pass through web check-in procedures, and the e-ticket computer
14 kiosk informed him that he would need to proceed to the ticket agent.

15 81. After standing in line, Mr. Ibrahim proceeded to the ticket agent and provided his
16 identification. The ticket agent took Mr. Ibrahim's identification and then informed him that the
17 computer was no longer working. The agent took Mr. Ibrahim's identification to a back room,
18 preventing Mr. Ibrahim from proceeding on his way. After approximately seven or eight
19 minutes, Mr. Ibrahim requested to speak with a supervisor to inquire about the delay. An agent
20 explained to him that his name appeared on a watch list. In view of all of the other passengers
21 standing in line, a supervisor who had been summoned explained that, pursuant to protocol, she
22 was required to call the FBI. Mr. Ibrahim was extremely embarrassed and had no idea why he
23 would be identified on the No-Fly List. Mr. Ibrahim was eventually cleared but subjected to an
24 enhanced screening involving a security agent waving a wand over his entire body, physical pat-
25 down, and hand-search of his luggage. This enhanced search caused additional delay. Since
26 then, similar events have occurred virtually every time Mr. Ibrahim has attempted to check in for
27 his flights and every time he has had a connecting flight. He is repeatedly stigmatized and

1 subjected to interrogations, delays, enhanced searches, detentions, and/or other travel
2 impediments virtually every time he flies.

3 82. On January 11, 2004, Mr. Ibrahim flew to Bombay as part of the American
4 Friends Service Committee delegation to the World Social Forum. On his return trip, during a
5 layover in Cairo and in full view of the other passengers standing nearby, two armed and
6 uniformed police officers asked Mr. Ibrahim to step aside from the immigration line because his
7 name matched one on a watch list. Mr. Ibrahim was frightened and embarrassed. The officers
8 searched through his luggage, resulting in a delay of approximately forty-five minutes. During
9 this time, he did not feel free to leave without submitting to the search.

10 83. Mr. Ibrahim then proceeded from the airport in Cairo to John F. Kennedy Airport
11 in New York City. When he reached the immigration counter and provided his passport, the
12 agent inputted the information into the computer and then stopped processing Mr. Ibrahim's
13 passport. Mr. Ibrahim asked the agent to return his passport, but the agent refused. The agent
14 instructed Mr. Ibrahim to wait for a customs official to accompany him to obtain his luggage.
15 Mr. Ibrahim did not feel free to leave. Again, this occurred in full view of other passengers
16 waiting to proceed through immigration, and Mr. Ibrahim was embarrassed and felt that the
17 immigration agents and the other passengers waiting in line regarded him with fear and
18 suspicion. The agent questioned Mr. Ibrahim until the other customs officer arrived. After an
19 additional thirty-minute wait, Mr. Ibrahim was able to retrieve his luggage. The officer then
20 escorted Mr. Ibrahim to another area, where two uniformed agents searched his bags for
21 approximately an hour, again in full view of other passengers. During this search, the agents
22 went through all of Mr. Ibrahim's personal belongings, opened personal letters, and went through
23 all of his documents and papers. During this entire time, Mr. Ibrahim did not feel free to leave.
24 When the search was completed, the supervising agent told Mr. Ibrahim, "Sorry for detaining
25 you." Mr. Ibrahim inquired as to whether this would happen to him again in the future, given
26 that they apparently were now satisfied with his identity. The agents could not assure
27 Mr. Ibrahim that he would not be subject to similar delays in the future.

1 Plaintiff Alexandra Hay

2 88. Ms. Alexandra Hay is a United States citizen and a third-year student at
3 Middlebury College in Vermont. Her parents reside in Boalsburg, Pennsylvania. She has no
4 criminal record or ties to terrorist organizations.

5 89. On November 25, 2003, Ms. Hay flew from Burlington, VT, to Harrisburg, PA, to
6 return home for the Thanksgiving break from her studies. When she arrived at the airport to
7 check in for her flight, the ticket agent informed Ms. Hay, in full view of the other passengers
8 waiting in line, that her name appeared on the No-Fly List. Ms. Hay asked why her name
9 appeared on the No-Fly List, and the agent informed her that she could not respond. Ms. Hay
10 felt frightened and embarrassed. After significant delay, the ticket agent was able to process
11 Ms. Hay's boarding pass. During this time, Ms. Hay did not feel free to leave or proceed onto
12 her flight.

13 90. Five days later, when Ms. Hay attempted to check in for her return flight, the
14 ticket agent again informed her that her name appeared on the No-Fly List, again in full view of
15 the other passengers waiting in line. Ms. Hay did not feel free to leave during the subsequent
16 delay in processing her boarding pass.

17 91. On one or both occasions, Ms. Hay asked the ticket agent how she could have her
18 name removed from the No-Fly List to prevent future delays. On one occasion, an airline agent
19 stated that they did not know how she could have her name removed from the No-Fly List. On
20 another occasion, an agent stated that they were not permitted to inform her how to have her
21 name removed.

22 92. As part of her college studies, Ms. Hay planned to fly to Europe in January 2004.
23 To preempt any further delays while she travels abroad, Ms. Hay filed a complaint with the TSA.
24 Ms. Hay complied with the TSA's procedures for clearing her name by completing the PIVF
25 along with the required certified copies of three pieces of identification. She obtained a letter of
26 response from the TSA, informing her that the TSA could not guarantee that her travel would be
27

1 free of delay in the future, and that she might still experience “enhanced screening” at security
2 screening locations.

3 93. On behalf of Ms. Hay, the American Civil Liberties Union of Pennsylvania
4 negotiated with the TSA to provide Ms. Hay with an escort to facilitate her check-in from
5 Philadelphia to Paris.

6 94. As a result of Defendants’ actions, Ms. Hay has been stigmatized as a suspected
7 terrorist. She is also subject to repeated delays. Ms. Hay cannot check in to flights using
8 computerized e-ticket kiosks like other passengers.

9 CLASS ACTION ALLEGATIONS

10 95. Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), Plaintiffs bring this
11 action on behalf of themselves and all other similarly situated individuals. Plaintiffs ask the
12 Court to certify as a class all individuals who have been or will be subject to interrogations,
13 delays, enhanced searches, and/or detentions as a result of having a name identical or similar to
14 one on the No-Fly List.

15 96. *Class-Wide Relief:* Defendants have acted or refused to act on grounds generally
16 applicable to the class as a whole. Class-wide declaratory and injunctive relief are therefore
17 appropriate under Rule 23(b)(2).

18 97. *Numerosity:* The class is so numerous that joinder of all members is
19 impracticable. Although Defendants refuse to disclose the number of individuals on the No-Fly
20 List, on information and belief, the No-Fly List contains hundreds if not thousands of names. As
21 of April 8, 2003, San Francisco International Airport alone reported that 339 passengers had
22 been subjected to heightened scrutiny as a result of the No-Fly List between September 19, 2001
23 and March 24, 2003. Oakland Airport reported that as of May 19, 2003, the No-Fly List was
24 eighty-eight (88) pages long. TSA documents acknowledge that, during December 2002, the
25 TSA received thirty (30) calls per day from airlines regarding false positives on the No-Fly List.
26 In addition, the class includes individuals who will be subject to No-Fly List procedures in the
27 future, whose identities are unknowable at the present time.

1 98. *Commonality:* There are questions of law and fact common to all members of the
2 class, including the facts regarding Defendants' management and administration of the No-Fly
3 List, and whether these facts establish constitutional violations. The common factual questions
4 include Defendants' (a) criteria for placing names on the No-Fly List; (b) directives and
5 guidance, if any, to airlines to implement the No-Fly List; (c) procedures, if any, for maintaining
6 the accuracy of the No-Fly List; (d) procedures, if any, for removing names from the No-Fly
7 List; (e) procedures, if any, for determining whether an individual has been mistakenly flagged
8 on the No-Fly List; and (f) procedures, if any, for protecting an individual from being mistakenly
9 flagged in the future. The common legal questions include whether the facts proved at trial
10 violate the Fifth Amendment and Fourth Amendment rights of plaintiffs.

11 99. *Typicality:* The claims of the representative plaintiffs are typical of those of the
12 class. All plaintiffs are subject to being delayed and stigmatized as suspected terrorists due to
13 the No-Fly List. The named plaintiffs each have been affected by the constitutionally deficient
14 No-Fly List policies and face a substantial risk of being adversely affected by them in the future.
15 All plaintiffs will continue to be subject to such treatment absent the requested relief.

16 100. *Adequacy of Class Representatives:* The class representatives will fairly and
17 adequately represent the interests of the class because they have been subjected to the treatment
18 challenged by the class as a whole. They have no interests in this matter that are antagonistic to
19 other plaintiffs.

20 101. *Adequacy of Class Counsel:* Undersigned counsel respectfully request that they
21 be appointed interim class counsel and ultimately be appointed class counsel. The undersigned
22 have many years of experience in civil rights and class action litigation and will adequately and
23 fairly represent the interests of the class. In addition, the undersigned are familiar with the No-
24 Fly List procedures as a result of being counsel in the FOIA litigation currently pending. The
25 ACLU has the financial resources to zealously represent the class.

1 **INJUNCTIVE AND DECLARATORY RELIEF**

2 102. An actual and immediate controversy has arisen and now exists between Plaintiffs
3 and Defendants related to their respective rights and duties. Defendants have unlawfully failed
4 to comply with constitutional requirements by engaging in the acts and omissions described in
5 this Complaint. Plaintiffs and the class therefore are entitled to a declaration of rights with
6 respect to this controversy.

7 103. Plaintiffs and the class they represent have no adequate remedy at law.
8 Defendants have acted, and continue to act, to deprive plaintiffs of their constitutional rights.
9 Plaintiffs are suffering and will continue to suffer irreparable injury as a result of the policies and
10 practices described in this Complaint unless those policies and practices are enjoined by this
11 Court. Plaintiffs have no plain, adequate or speedy remedy at law and are entitled to injunctive
12 relief against Defendants. Plaintiffs have no administrative remedy because Defendants' policies
13 and practices preclude any administrative determinations from affording actual relief.

14 **CLAIMS FOR RELIEF**

15 **Count I: Violation of Fifth Amendment Right to Due Process**

16 104. Plaintiffs bring a due process claim on behalf of the class. Individuals whose
17 names are identical or similar to those on the No-Fly List are stigmatized and subjected to
18 interrogations, delays, enhanced body and luggage searches, detentions, and/or other travel
19 impediments. These harms trigger the procedural protections of the Fifth Amendment's Due
20 Process Clause.

21 105. Defendants' actions in administering and maintaining the No-Fly List deprive
22 Plaintiffs of liberty and property interests protected by the Fifth Amendment. Defendants are
23 grossly negligent, reckless, and/or deliberately indifferent to the risk that their actions will cause
24 these deprivations. The deprivations are without due process of law because Defendants have
25 failed to provide constitutionally adequate mechanisms for Plaintiffs to avoid being subjected to
26 the stigma, interrogations, delays, enhanced searches, detentions, and/or other travel
27 impediments associated with having a name identical or similar to a name on the No-Fly List.

1 **Count II: Violation of the Fourth Amendment**

2 Plaintiffs bring a Fourth Amendment claim on behalf of the class. The Fourth
3 Amendment to the United States Constitution protects individuals from unreasonable searches
4 and seizures. Defendants' actions in administering and maintaining the No-Fly List cause
5 plaintiffs to be subjected to unreasonable searches and seizures, in violation of the Fourth
6 Amendment.

7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiffs respectfully request that the Court:

- 9 1. Certify this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2).
10 2. Declare that Defendants' maintenance, management, and dissemination of the
11 No-Fly List are unconstitutional under the Fifth and Fourth Amendments.
12 3. Require Defendants to remedy immediately the due process and Fourth
13 Amendment defects in the maintenance, management, and dissemination of the No-Fly List.
14 4. Award Plaintiffs costs and reasonable attorneys fees pursuant to 28 U.S.C.
15 § 2412, or other applicable law.
16 5. Grant such other and further relief as the Court deems just and proper.

17 DATED this 6th day of April, 2004.

18 Respectfully submitted,

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