

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

GULET MOHAMED,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
ERIC H. HOLDER, JR., in his official	)	CASE NO.: 1:11-cv-00050
capacity as Attorney General of the United States;	)	THE HON. ANTHONY J. TRENGA
	)	
JAMES B. COMEY, in his official capacity	)	
as Director of the Federal Bureau of Investigation;	)	
	)	<b>Fourth Amended COMPLAINT</b>
TIMOTHY J. HEALY, in his official capacity	)	<b>FOR DAMAGES AND INJUNCTIVE</b>
as Director of the Terrorist Screening Center;	)	<b>AND DECLARATORY RELIEF</b>
	)	
JEH C. JOHNSON, in his official capacity	)	<b>(Violation of Fifth and Fourteenth</b>
as Secretary of Homeland Security;	)	<b>Amendment Rights and the</b>
	)	<b>Administrative Procedure Act)</b>
JOHN S. PISTOLE, in his official capacity	)	
as Administrator of the Transportation	)	
Security Administration;	)	
	)	
Unknown TSC Agents, in their individual	)	
Capacity,	)	
	)	
Defendants	)	

CASE NO.: 1:11-cv-00050  
THE HON. ANTHONY J. TRENGA

**Fourth Amended COMPLAINT  
FOR DAMAGES AND INJUNCTIVE  
AND DECLARATORY RELIEF**

**(Violation of Fifth and Fourteenth  
Amendment Rights and the  
Administrative Procedure Act)**

**INTRODUCTION**

1. Subsequent to the torture and detention, carried out through foreign intermediaries, that the United States inflicted on Mr. Mohamed, Defendants—various government agencies—

prevented him from returning home to the United States. Defendants exiled Mr. Mohamed by placing him on a “No Fly List” without any notice or hearing.

2. Defendants placed Mr. Mohamed on its No Fly List while he was abroad in order to pressure him to forgo his right to counsel, submit to invasive questioning, and become an informant for the FBI upon returning to the United States. Since 2010, there are have been almost two dozen publicly documented instances in which Defendants have replicated this pattern of conduct, repeatedly subjecting traveling Muslim citizens to No Fly List placement for substantially similar purposes and in similar contexts.

3. The regularity of such occurrences indicates that Defendants utilize the No Fly List, not just to protect commercial aircraft, but rather to coerce a specific subset of Americans—Muslim citizens—to forgo their rights, obstruct their ability to move freely, and otherwise give Defendants’ agents leverage over listed persons.

4. Defendants’ continued inclusion of Mr. Mohamed on the No Fly List substantially burdens his fundamental right to return and reside in the United States. His inclusion deprives him of his liberty interest in traveling by plane and being free from the government-imposed stigma that being on a terrorist watch list inflicts.

5. The only thing preventing Mr. Mohamed from completing one of the five primary obligations of his faith—the Islamic pilgrimage to Mecca—is his inclusion on Defendants’ No Fly List. The year that Mr. Mohamed is removed from the No Fly List is the year he travels by plane to Mecca and returns to the United States. As a citizen, Mr. Mohamed wants to know that Defendants will never again deprive him of his right to return to the United States.

6. In the aftermath of Mr. Mohamed’s return, Defendants have failed to provide him with a meaningful opportunity to rebut Defendants’ conclusion—evinced by Mr. Mohamed’s inclusion

### PARTIES

7. Plaintiff Gulet Mohamed, 21, is a naturalized U.S. citizen. He was born in Somalia and immigrated to the United States at the age of three. Mr. Mohamed is a resident of Alexandria, Virginia. On December 20, 2010, when Mr. Mohamed went to renew his Kuwaiti visitor's visa at an airport in Kuwait, he was detained by unknown assailants, tortured and interrogated for more than one week. He was transferred to a deportation facility on December 28, 2010 where he awaited deportation back to the United States. Despite Kuwait's desire to return Mr. Mohamed to the United States, Kuwaiti authorities were unable to deport him by air due to Defendants' actions. After this legal action commenced, Defendants allowed Mr. Mohamed to return to the United States.

8. Defendant Eric H. Holder, Jr. is the Attorney General of the United States and heads the Department of Justice ("DOJ"), a department of the United States government that oversees the Federal Bureau of Investigation ("FBI"). The FBI administers the Terrorist Screening Center ("TSC"), which was created to consolidate the government's approach to terrorism screening. The TSC develops and maintains the federal government's consolidated Terrorist Screening Database (the "watch list"), of which the No Fly List is a component. Defendant Holder is sued in his official capacity.

9. Defendant James B. Comey is Director of the Federal Bureau of Investigation which administers the TSC. He is sued in his official capacity.

10. Defendant Timothy Healy is the Director of the TSC and is sued in his official capacity.

11. Defendant Jeh C. Johnson is the Secretary, Department of Homeland Security (DHS). DHS, through and with the Transportation Security Administration, administers the Traveler Redress Inquiry Program (TRIP). He is sued in his official capacity.

12. Defendant John S. Pistole is the Administrator, Transportation Security Administration

(TSA). TSA, bureaucratically a division within DHS, is one of the front-line agencies that implements TSC's watch lists and which, with DHS, administers TRIP. He is sued in his official capacity.

13. Defendants Unknown TSC Agents are the individuals that placed Plaintiff on the No Fly List.

### **JURISDICTION**

14. This is a complaint for damages and injunctive and declaratory relief based upon civil rights and constitutional violations committed by the Terrorist Screening Center, Federal Bureau of Investigation, and U.S. Department of Justice in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and the Administrative Procedure Act.

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

16. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendants are officers of agencies of the United States sued in their official capacity and because this judicial district is where Plaintiff Mohamed resides and where a substantial part of the events or omissions giving rise to the claim occurred.

### **FACTUAL ALLEGATIONS**

#### **A. The Federal Government's Terrorist Watch List**

18. In September 2003, Attorney General John Ashcroft established the Terrorist Screening Center ("TSC") to consolidate the government's approach to terrorism screening. The TSC,

Terrorist Screening Database (the "watch list"). TSC's consolidated watch list is the federal government's master list of suspected international and domestic terrorist records used for watch list-related screening.

19. TSC sends records from its terrorist watch list to other government agencies that in turn use those records to identify suspected terrorists. For example, applicable TSC records are provided to the Transportation Security Administration ("TSA") for use by airlines in pre-screening passengers and to U.S. Customs and Border Protection ("CBP") for use in screening travelers entering the United States.

20. Thus, while the TSC maintains and controls the database of suspected terrorists, it is the front-line agencies like the TSA that carry out the screening function. In the context of air travel, when individuals make airline reservations and check in at airports, either TSA or the airline conducts a name-based search of the individual to determine whether he or she is on a watch list.

21. Front-line screening agencies like TSA do not make determinations that place or remove individuals from watch lists.

22. Two government entities are primarily responsible for nominating individuals for inclusion in the terrorist watch list—the National Counterterrorism Center ("NCTC") and the Federal Bureau of Investigation ("FBI").

23. The NCTC, which is managed by the Office of the Director of National Intelligence, relies on information from other federal departments and agencies when including known or suspected international terrorists in its Terrorist Identities Datamart Environment ("TIDE") database. The NCTC reviews TIDE entries and recommends specific entries to the Terrorist Screening Center for inclusion in the watch list. TIDE is the source of all international terrorist identifier information included in the watch list.

24. The FBI nominates individuals to be included on the watch list but does not limit its nominations to persons it believes pose a threat to commercial aircraft. The FBI also nominates individuals it considers as a broader threat to domestic or international security.

25. TSC makes the final decision on whether a nominated individual meets the minimum requirements for inclusion into the watch list as a known or suspected terrorist and which screening systems will receive the information about that individual.

26. The minimum requirements for inclusion, as a 2006 Department of Justice Inspector General's report concluded, were "any degree of a terrorism nexus."

27. A 2007 GAO report found that the TSC accepts almost 100 percent of nominations made to the watch list.

28. Defendant Healy, Director of the TSC, has testified that in evaluating whether an individual meets the criteria for inclusion on the consolidated watch list, the TSC determines whether the nominated individual is "reasonably suspected" of having possible links to terrorism. According to the TSC, "reasonable suspicion requires articulable facts which, taken together with rational inferences, reasonably warrant the determination that an individual is known or suspected to be or has been engaged in conduct constituting, in preparation for, in aid of or related to terrorism and terrorist activities." Defendants have not stated publicly what standards or criteria are applied to determine whether an individual on the consolidated watch list will be placed on the No Fly List.

29. Under these standards, the number of records in the consolidated watch list has swelled to an estimated one million names, representing the identities and aliases of approximately 400,000 individuals. Once an individual has been placed on the watch list, the individual remains on the list until the agency that supplied the initial information in support of the nomination determines that the individual should be removed.

30. The number of individuals on the No Fly List more than doubled from 10,000 person in 2011 to 21,000 in 2012. In 2012, 500 American citizens were on the No Fly List.

31. While no government agency discloses a persons' status on the No Fly List before they try to fly, listed persons who unsuccessfully attempt to fly are regularly told—by TSA agents, other US government personnel, or airline personnel—that they are on the No Fly List.

32. In response to intelligence failures that permitted Nigerian citizen Umar Farouk Abdulmutallab, a would-be bomber, to fly from Amsterdam to Detroit on December 25, 2009, the Defendants have dramatically expanded the watch list as a whole and the No Fly List in particular. At a recent Senate hearing, Russell E. Travers, Deputy Director of the National Counterterrorism Center, stated that "[t]he entire federal government is leaning very far forward on putting people on lists," and that the watch list is "getting bigger, and it will get even bigger."

#### B. Inadequacy of Redress Procedure

33. The government entities and individuals involved in the creation, maintenance, support, modification, and enforcement of the No Fly List, including Defendants, have not provided travelers with a fair and effective mechanism through which they can challenge their inclusion on the No Fly List either before or after the placement

34. An individual who has been barred from boarding an aircraft on account of apparent inclusion on the No Fly List has no avenue for redress, because the only agency with the authority to place and remove persons on the No Fly List—TSC—has no administrative process.

35. The TSC, which is administered by the FBI, does not accept redress inquiries from the public, nor does it directly provide final disposition letters to individuals who have submitted redress queries through DHS TRIP.

36. Individuals who utilize DHS TRIP after having been prevented from flying must

Redress Inquiry Program ("DHS TRIP"). The DHS TRIP Program provides each individual with a "Redress Control Number" associated with the individual's report. However, by bureaucratic design, DHS does not know why TSC places any person on its No Fly List and lacks the authority to remove someone or to even know that TSC has removed someone from its list.

37. For those cases in which TSC makes a determination regarding a particular individual's status on the watch lists, including the No Fly List, the front-line screening agency responds to the individual with a letter that neither confirms nor denies the existence of any terrorist watch list records relating to the individual. The government does not provide the individual with any opportunity to confront, or to rebut, the grounds for his possible inclusion on the watch list.

38. The only "process" available to listed individuals, either before or after their placement on the No Fly List, is to submit their names and other identifying information to an agency that cannot remove any person from the No Fly List.

### **PLAINTIFF'S ALLEGATIONS**

39. On or about March of 2009, Mr. Mohamed temporarily left the United States to learn Arabic and connect with members of his family living abroad. His first destination was Sanaa, Yemen, where he studied Arabic for a few weeks. However, out of concern for his safety given the instability of the country, he traveled to Somalia and stayed with relatives for several months. Finally, on or about August of 2009, he moved to Kuwait to continue his Arabic studies and stay with an uncle. Mr. Mohamed entered each country lawfully and maintained lawful status for the duration of his travels abroad.

40. Since Mr. Mohamed has been in Kuwait, he successfully renewed his visitor's visa twice. Both times, Mr. Mohamed went to a Kuwaiti airport, followed proper procedures, and received 90-day extensions for his visitor's visa without incident.



41. On December 20, 2010, Mr. Mohamed went to the Kuwait International Airport, near Kuwait City, to renew his visa, just as he had done every three months since he arrived in Kuwait. After an abnormally long wait of several hours, Mr. Mohamed contacted his brother in Virginia via email to inform him that the visa process was taking longer than usual. This is the last communication anyone received from Mr. Mohamed for more than a week.

42. While at the airport, two men in civilian clothes approached Mr. Mohamed, handcuffed him, blindfolded him, escorted him to a waiting SUV, and drove him to an undisclosed location approximately fifteen minutes from the airport. During Mr. Mohamed's abduction, he was repeatedly beaten and tortured by his interrogators. Mr. Mohamed's interrogators struck him in the face with their hands regularly and in Mr. Mohamed's estimate more than a hundred times. The interrogators whipped his feet and other parts of his body with sticks. Mr. Mohamed was forced by his interrogators to stand for prolonged periods of time. At one point, the interrogators threatened to run currents of electricity through Mr. Mohamed's genitals. In another instance, Mr. Mohamed's arms were tied to a ceiling beam and left in that position until he lost consciousness.

43. Mr. Mohamed's interrogators inflicted these beatings, torture, and grave threats onto Mr. Mohamed for more than a week. Mr. Mohamed remained blindfolded and handcuffed most of the time.

44. The subject matter of the interrogators' questioning—communicated by one interrogator in perfect American English—indicates that Defendants Unknown Agents not only facilitated Mr. Mohamed's illegal detention, interrogation, and torture but participated directly. The English speaking interrogator, Defendant Unknown Agent, asked Mr. Mohamed detailed questions about his American siblings, referencing non-public facts regarding his family. For example, Defendant Unknown Agent knew the educational attainment of several siblings, their names, and indicated that Defendant Unknown Agent was aware that Mr. Mohamed's father was

45. Furthermore, Mr. Mohamed was asked questions not about his actions within Kuwait but questions pertaining to individuals such as Anwar Al-Awlaki of particular interest to the United States. It is highly implausible that Kuwaiti officials would ask such questions and torture an American citizen—in light of the dependent relationship Kuwait maintains with the United States—without the knowledge and approval of the United States.

46. On Tuesday, December 28, 2010, Mr. Mohamed's interrogators transferred him to a deportation facility. In this facility, Mr. Mohamed was placed with individuals awaiting deportation, receiving visits from family, and benefiting from the facility's reasonable treatment.

47. At this deportation facility, Mr. Mohamed conversed with a prisoner who covertly kept a mobile phone in his cell. Mr. Mohamed asked to use it, because his family still knew neither what happened to him nor his present location. Mr. Mohamed made a call to his family, telling them where he was and what had happened to him. He spoke with and retained one of his attorneys, Gadeir Abbas, soon after.

48. Kuwaiti officials told members of Mr. Mohamed's family that they are holding him at the behest of the United States government and are willing to release him since they have no interest in keeping him in custody. Kuwaiti officials attempted to deport Mr. Mohamed but told members of his family that the United States has placed him on the No Fly List which is preventing his deportation. Mr. Mohamed's placement on the No Fly List was confirmed by the United States in conversations reported in the press.

49. Also on December 28, 2010, FBI agents visited Mr. Mohamed. Once he informed them that he was represented by legal counsel in the United States and did not wish to answer their questions, the FBI agents suggested that they had some control over his detention by telling Mr. Mohamed that they could expeditiously procure his release from detention if Mr. Mohamed

he did not speak to them.

50. On or about January 12, 2011, FBI agents again visited Mr. Mohamed. Again, Mr. Mohamed informed the agents that he would not answer their questions without his lawyer present. The FBI agents persisted, asking him questions for several hours despite Mr. Mohamed's repeated entreaties for the interrogation to stop and essentially continuing the interrogation where Mr. Mohamed's torturers stopped. The FBI agents threatened Mr. Mohamed with future interrogations, criminal charges, and during the interrogation the agents physically intimidated Mr. Mohamed by crowding him and yelling. A Kuwaiti official intervened to calm the FBI agents down and request that the interrogation be brought to an end.

51. On January 16, 2010, at the direction of Kuwaiti officials, Mr. Mohamed's family purchased a ticket for him back to the United States and delivered that ticket to Kuwaiti officials. When Kuwaiti officials took Mr. Mohamed to the airport on January 16, 2010, however, Mr. Mohamed was not allowed onto the United Airlines flight.

52. After this legal action commenced, Defendants allowed Mr. Mohamed to return to the United States on January 21, 2011.

53. Defendants have utilized the No Fly List in a similar manner against other Muslim citizens. Publicly documented examples of Defendants using the No Fly List to exile American citizens abroad while communicating to such persons that becoming an FBI informant or submitting to interrogation overseas without counsel could resolve their placement include: Amayan Latif, Raymond Knaeble, Faisal Nabin Kashem, Elias Mustafa Mohamed, Steven Washburn, Najib Ghaleb, Mashaal Rana, Jamal Tarhuni, Mustafa Elogbi, Stephen Persaud, and Yonas Fikre.

54. Publicly documented examples of American citizens simply exiled abroad by Defendants

placing them on the No Fly List include: Kevin Iraniha, Abdullatif Muthanna, Mashaal Rana, Ali Ahmed, Saadiq Long, and Amr Abulrub. And finally, there are also publicly documented examples of Defendant placing or maintaining citizens who are in the United States on the No Fly List, because they declined to become an FBI informant or submit to interrogation, including: Michael Migliore, Amir Meshal, Salah Ahmed, and Ibraheim Mashal.

### **CLAIMS FOR RELIEF**

#### **COUNT I - VIOLATION OF U.S. CITIZENS' RIGHT TO RESIDE IN UNITED STATES AND TO REENTER THE UNITED STATES FROM ABROAD**

##### **Right to Citizenship (Fourteenth Amendment)**

55. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

56. By the actions described above, Defendants, acting under color of law and through their agents, have deprived and continue to deprive Mr. Mohamed of his rights guaranteed by the Fourteenth Amendment of the United States Constitution.

57. As a United States citizen, Mr. Mohamed has an absolute right to return to the United States from abroad.

58. By placing Mr. Mohamed on the No Fly List while he was abroad, Defendants Unknown TSC Agents prevented Mr. Mohamed from boarding an aircraft to return to the United States, even though no other means existed by which he may return to the United States, thus violating the constitutional rights of Mr. Mohamed. Kuwaiti officials indicated that they were ready to deport Mr. Mohamed to the United States but were being prevented from doing so by Defendants

Unknown TSC Agents. Defendants Unknown TSC Agents knew or should have known that their actions violated Mr. Mohamed's clearly established citizenship rights.

59. By maintaining Mr. Mohamed on the No Fly List, Defendants have substantially burdened his fundamental right to return to the United States in the immediate future. It is only Defendants' inclusion of Mr. Mohamed on the No Fly List that prevents him from again departing the United States to visit family in Somalia and Canada and to complete a religious pilgrimage to Mecca, Saudi Arabia, and Defendants' overbroad actions substantially burden Mr. Mohamed's right to return to the United States.

**COUNT II - UNLAWFUL AGENCY ACTION (5 U.S.C. §§ 702, 706)**

60. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

61. Defendants' actions described herein were and are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional right and should be set aside as unlawful pursuant to 5 U.S.C. § 706. Defendants' violations of Plaintiffs' constitutional and statutory rights constitute agency actions that are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and contrary to constitutional rights, power, privilege, or immunity in violation of 5 U.S.C. § 706.

62. Defendants' placement of Mr. Mohamed on the No Fly List violate his Fourteenth Amendment right to return to the United States and his Fifth Amendment liberty interests in traveling by air and being free from false governmental stigmatization as a

terrorist.

**COUNT III - FIFTH AMENDMENT: PROCEDURAL DUE PROCESS –  
FAILURE TO PROVIDE PRE OR POST DEPRIVATION NOTICE AND  
HEARING**

63. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

64. Defendants have failed to provide Mr. Mohamed with a meaningful opportunity to challenge his inclusion on the No Fly List either prior or subsequent to his placement, depriving him of his liberty interest in (1) being able to return to the United States, (2) traveling by air like other American citizens, and (3) being free from false governmental stigmatization as a terrorist.

65. By failing to provide Mr. Mohamed with a constitutionally sufficient legal mechanism for challenging his inclusion on the No Fly List, Defendants have deprived Mr. Mohamed of his constitutionally protected liberty interests without due process of law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

a. An injunction that:

- i. requires Defendants to remedy the constitutional violations identified above, including the removal of Plaintiff from any watch list or database that unduly burdens his fundamental right to return to the United States
- ii. requires Defendants to provide Plaintiff with meaningful notice of the grounds



/s/ \_\_\_\_\_

**Nina Kraut**

**(DC Bar #348185)**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of March, 2014 a true and correct copy of the foregoing proposed Fourth Amended Complaint was served electronically on all parties of record through the U.S. District Court for the Eastern District of Columbia Electronic Case Filing System (ECF) and that the documents are available on the ECF system.

By:   /s/\_\_\_\_\_

**Gadeir Abbas**  
**(VA Bar #81161)**