

HINA SHAMSI (admitted *pro hac vice*)

Email: hshamsi@aclu.org

NUSRAT JAHAN CHOUDHURY (admitted *pro hac vice*)

Email: nchoudhury@aclu.org

American Civil Liberties Union Foundation

125 Broad Street, 18th Floor

New York, NY 10004

Tel.: (212) 519-2500

Fax: (212) 549-2654

STEVEN M. WILKER, OSB No. 911882

Email: steven.wilker@tonkon.com

Tonkon Torp LLP

1600 Pioneer Tower

888 SW 5th Avenue

Portland, OR 97204

Tel.: (503) 802-2040; Fax: (503) 972-3740

Cooperating Attorney for the ACLU Foundation of Oregon

KEVIN DÍAZ, OSB No. 970480

Email: kdiaz@aclu-or.org

ACLU Foundation of Oregon

P.O. Box 40585

Portland, OR 97240

Tel.: (503) 227-6928; Fax: (503) 227-6948

Attorneys for Plaintiffs

STUART F. DELERY

Assistant Attorney General

Civil Division

DIANE KELLEHER

Assistant Branch Director

Federal Programs Branch

AMY POWELL

amy.powell@usdoj.gov

LILY FAREL

lily.farel@usdoj.gov

SCOTT RISNER

scott.risner@usdoj.gov

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue, N.W

1 – THIRD JOINT STATEMENT OF STIPULATED FACTS

Latif v. Holder, No. 3:10-cv-00750-BR

Washington, D.C. 20001
 Phone: (202) 514-2395
 Fax: (202) 616-8470
Attorneys for Defendants

**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>	THIRD JOINT STATEMENT OF STIPULATED FACTS

THIRD JOINT STATEMENT OF STIPULATED FACTS

The Court’s Opinion and Order of August 28, 2013 [ECF 110] indicated that the Court required additional information regarding whether appellate judicial review under 49 U.S.C. § 46110 “of the record on which the government acted as to each Plaintiff” would satisfy due process. ECF 110 at 35. Specifically, the Court indicated that it lacked information regarding “what specifically would be in the administrative record submitted to the appellate court, what other materials might be submitted, or the nature of the record or materials that deems them sensitive and/or classified so they cannot be revealed to anyone other than the appellate court.” ECF 110 at 34. Pursuant to the status report filed on September 16, 2013, counsel for the parties have conferred and do hereby submit the following Third Joint Statement of Stipulated Facts. This statement supplements the Joint Statement of Stipulated Facts filed by the parties on January 31, 2013 [ECF 84], which set forth facts regarding, *inter alia*, the Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”) redress process.

1. Individuals who have been denied boarding on commercial aircraft and believe that their denial is a direct result of being included on the No Fly List are permitted to apply for redress through the DHS TRIP process, file an administrative appeal of their DHS TRIP determination, and seek judicial review of their final DHS TRIP determination.
2. The DHS TRIP administrative review process concludes with a final determination letter. When the final determination letter indicates that the petitioner may seek judicial review of the decisions represented in the letter in the Court of Appeals pursuant to 49 U.S.C. § 46110, it does not inform the petitioner whether he or she is on the No Fly List or, if he or she is, the legal or factual basis for inclusion.
3. An individual who seeks judicial review of a final DHS TRIP determination letter under 49 U.S.C. § 46110 may submit a petition for review to the appropriate court of appeals.

In response to such a petition, the government will submit an administrative record to the court.

4. If DHS TRIP review of a petitioner's redress file resulted in the final determination that the petitioner is not on the No Fly List, the administrative record will inform the court of that fact.
5. If DHS TRIP review of a petitioner's redress file resulted in the final determination that the petitioner should remain on the No Fly List, the administrative record will include information that the government relies upon to maintain that listing. This information may include information obtained from human sources, foreign governments, and signals intelligence.
6. A petitioner is informed that the government has filed an administrative record through the docketing of that record. The administrative record provided to the court of appeals includes any information the petitioner submitted to the government as part of his or her DHS TRIP redress request, and the petitioner has access to that portion of the record. Moreover, the government may provide to the court *ex parte* and *in camera* information in the administrative record that the government has determined is classified, Sensitive Security Information, law enforcement investigative information, and/or otherwise privileged or protected from disclosure by statute or regulation.
7. The government does not, at any point during the judicial review process, provide the petitioner with confirmation of whether he or she is on the No Fly List, the government's reasons for including the petitioner's name on the list, or any information or evidence relied upon to maintain the petitioner's name on the list.
8. For a petitioner who is on the No Fly List, the court of appeals will review the administrative record submitted by the government in order to determine if the government reasonably determined that the petitioner satisfied the minimum substantive derogatory criteria for inclusion on the list. Those criteria have not been made public but will be provided to the court *ex parte* and *in camera*.
9. If following review of the administrative record, the court of appeals determines that the government correctly determined that the petitioner's name should remain on the No Fly List, then the court may deny the petition for review.
10. In reviewing an individual's petition for review challenging his or her asserted inclusion on the No Fly List, a court of appeals may determine that the individual's placement is not supported by the administrative record provided by the government. The government

takes the position that, in such circumstances, the court may remand the matter to the government for appropriate action.

Dated: September 26, 2013.

/s/ Hina Shamsi

HINA SHAMSI (admitted *pro hac vice*)

Email: hshamsi@aclu.org

NUSRAT JAHAN CHOUDHURY

(admitted *pro hac vice*)

Email: nchoudhury@aclu.org

American Civil Liberties Union Foundation

125 Broad Street, 18th Floor

New York, NY 10004

Tel.: (212) 519-2500

Fax: (212) 549-2654

STEVEN M. WILKER, OSB No. 911882

Email: steven.wilker@tonkon.com

Tonkon Torp LLP

1600 Pioneer Tower

888 SW 5th Avenue

Portland, OR 97204

Tel.: (503) 802-2040; Fax: (503) 972-3740

Cooperating Attorney for the ACLU

Foundation of Oregon

KEVIN DÍAZ, OSB No. 970480

Email: kdiaz@aclu-or.org

ACLU Foundation of Oregon

P.O. Box 40585

Portland, OR 97240

Tel.: (503) 227-6928; Fax: (503) 227-6948

Attorneys for Plaintiffs

Respectfully submitted,

STUART F. DELERY

Assistant Attorney General

Civil Division

DIANE KELLEHER

Assistant Branch Director

Federal Programs Branch

/s/ Scott Risner

AMY POWELL

amy.powell@usdoj.gov

LILY FAREL

lily.farel@usdoj.gov

SCOTT RISNER

scott.risner@usdoj.gov

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Avenue, N.W.

Washington, D.C. 20001

Tel: (202) 514-2395

Fax: (202) 616-8470

Attorneys for Defendants