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

GULET MOHAMED

Plaintiff

v.

ERIC H. HOLDER, JR., in his official
capacity as Attorney General of the
United States;

ROBERT S. MUELLER, III, in his
official capacity as Director of the
Federal Bureau of Investigation; and

TIMOTHY J. HEALY, in his official
capacity as Director of the Terrorist
Screening Center.

Defendants

CASE NO.: 1:11 CV 50

HON.: AJT/TRS

COMPLAINT

**FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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

**COMPLAINT SEEKING A TEMPORARY RESTRAINING ORDER, PRELIMINARY
AND PERMANENT INJUNCTION, AND OTHER RELIEF**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff, Gulet Mohamed, hereby moves the court for a temporary restraining order and preliminary injunction enjoining Defendants from preventing Plaintiff from returning to the United States by placing him on a No Fly List.

Plaintiff's motion is supported by the Complaint and a Memorandum of Law submitted to the Court.

INTRODUCTION

1. The United States is not allowing Mr. Gulet Mohamed, a nineteen year-old U.S. citizen, to return to the United States. Currently, Mr. Mohamed is being detained in a Kuwaiti deportation facility and the Defendants' placement of Mr. Mohamed on a No Fly List is preventing Kuwait from deporting him back to the United States. During Mr. Mohamed's custody in Kuwait, he has been subject to torture, beatings, and threats to his life and the lives of his family. And instead of working for Mr. Mohamed's return to the United States, Defendants have placed Mr. Mohamed on a No Fly List that is making it impossible for Kuwait to deport him. Mr. Mohamed faces no criminal charges in Kuwait. He faces no criminal charges in the United States. Indeed, there is not even an outstanding allegation of wrongdoing against this American teenager. And yet, the United States, by putting him on a No Fly List and preventing Kuwait from deporting him via a direct flight back to the United States, has effectively banished him from his country of citizenship. The United States is depriving Mr. Mohamed of perhaps the most basic prerogative of American citizenship: the right to reside within the United States. This is patently

unconstitutional, and it is up to this Court to bring Gulet Mohamed—an American citizen—back to his country.

PARTIES

2. Plaintiff Gulet Mohamed is a nineteen year-old 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 a week, and then transferred to a deportation facility on December 28, 2010 where Mr. Mohamed awaits deportation back to the United States. Upon information and belief, despite Kuwait's desire to return Mr. Mohamed to the United States, Kuwait has been unable to deport Mr. Mohamed, because Defendants have placed Mr. Mohamed on a No Fly List.

3. 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 in turn 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.

4. Defendant Robert S. Mueller is Director of the Federal Bureau of Investigation, which administers the TSC. Defendant Mueller is sued in his official capacity.

5. Defendant Timothy J. Healy is Director of the Terrorist Screening Center and is sued in his official capacity.

JURISDICTION AND VENUE

6. This is a complaint for 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.

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

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

9. 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

10. In September 2003, Attorney General John Ashcroft established the Terrorist Screening Center to consolidate the government's approach to terrorism screening. The TSC, which is administered by the FBI, develops and maintains the federal government's consolidated Terrorist Screening Database (the "watch list"). TSC's consolidated watch list is the federal government's master repository for suspected international and domestic terrorist records used for watch list-related screening.

11. 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. 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, the front-line screening agency, TSA, or the airline, conducts a name-based search of the individual to determine whether he or she is on a watch list.

12. 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. 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. The FBI, in turn, nominates to the watch list individuals with suspected ties to domestic terrorism. 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.

13. 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 that is distributed to the TSA.

14. 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.

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

16. 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

17. 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.

18. An individual who has been barred from boarding an aircraft on account of apparent inclusion on the No Fly List has no clear avenue for redress, because no single government entity is responsible for removing an individual from the list. The TSC, which is administered by the FBI, does not accept redress inquiries directly from the public, nor does it directly provide final disposition letters to individuals who have submitted redress queries. Rather, individuals who seek redress after having been prevented from flying must complete a standard form and submit it to the Department of Homeland Security Traveler Redress Inquiry Program ("DHS TRIP"). The DHS TRIP Program provides each individual with a "Redress Control Number" associated with the individual's report. Yet it is the TSC that has responsibility for consulting with relevant agencies to determine whether an individual has been appropriately listed and should remain on the list.

19. Once 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. Thus, the only "process" available to individuals who are prevented from boarding commercial flights is to submit their

names and other identifying information to the Department of Homeland Security and hope that an unknown government agency corrects an error or changes its mind.

PLAINTIFF'S ALLEGATIONS

20. 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.

21. 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.

22. 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.

23. 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. At one point, the interrogators threatened to run currents of electricity through Mr. Mohamed's genitals.

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

25. The subject matter of the interrogators' questioning—communicated in both English and Arabic—also indicates that Defendants facilitated Mr. Mohamed's illegal detention, interrogation, and torture. Mr. Mohamed's interrogators asked him detailed questions about his American siblings, referenced non-public facts regarding his family, and even had information about specific encounters Mr. Mohamed had in Virginia. One of his interrogators claimed to have met Mr. Mohamed at a mosque in Virginia where the two exchanged introductions briefly.

26. 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.

27. 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.

28. 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.

29. Kuwaiti officials have since 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 have attempted to deport Mr. Mohamed but have told members of his family that the United States has placed him on a No Fly List which is preventing his deportation. Mr. Mohamed's placement on the No Fly List has been confirmed by the United States in conversations reported in the press.

30. 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, he was told that they could expeditiously procure his release from detention if Mr. Mohamed spoke to them. The agents told Mr. Mohamed that Mr. he would remain in detention indefinitely if he did not speak to them.

31. 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. 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.

32. 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.

33. The United States is the only place Kuwait can deport Mr. Mohamed. However, due to Defendants' actions, Mr. Mohamed simply cannot board a plane to the United States.

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) 42 U.S.C. § 1983

32. 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.

33. As a United States citizen, Mr. Mohamed has an absolute right to reside in the United States and to return to the United States from abroad.

34. Defendants continue to prevent Mr. Mohamed from boarding an aircraft to return to the United States, even though no other means exist by which he may return to the United States,

thus violating the constitutional rights of Mr. Mohamed. Kuwaiti officials have indicated that they are ready to deport Mr. Mohamed to the United States but are being prevented from doing so by the United States.

COUNT II
UNLAWFUL AGENCY ACTION

5 U.S.C. §§ 702, 706

35. 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.

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 prevents him from flying;
- and

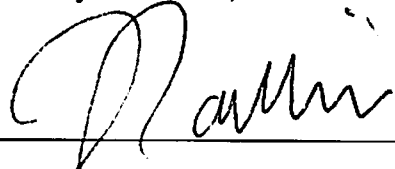
ii. requires Defendants to provide Plaintiff with meaningful notice of the grounds for his inclusion on a government watch list, and an opportunity to rebut the government's charges and to clear his name; and

iii. requires Defendants to permit Plaintiff Mohamed to return to the United States subject to suitable screening procedures.

c. Awards attorneys' fees, costs, and expenses of all litigation.

d. Grants such other relief as the Court may deem just and appropriate

Respectfully submitted,

By: 

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